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code of federal regulations

Public Welfare

45

PARTS 200 TO 499

Revised as of October 1, 1990

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PARTS 200 TO 499

Revised as of October 1, 1990

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AS OF OCTOBER 1, 1990

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Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

ISSUE DATES

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16	as of January 1
Title 17 through Title 27	as of April 1
Title 28 through Title 41	as of July 1
Title 42 through Title 50	as of October 1

The appropriate revision date is printed on the cover of each volume.

LEGAL STATUS

The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

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OMB CONTROL NUMBERS

The Paperwork Reduction Act of 1980 (Pub. L. 96-511) requires Federal agencies to display an OMB control number with their information collection request. Many agencies have begun publishing numerous OMB control numbers as amendments to existing regulations in the CFR. These OMB numbers are placed as close as possible to the applicable recordkeeping or reporting requirements.

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A subject index to the Code of Federal Regulations is contained in a separate volume, revised annually as of January 1, entitled CFR INDEX AND FINDING AIDS. This volume contains the Parallel Table of Statutory Authorities and Agency Rules (Table I), and Acts Requiring Publication in the Federal Register (Table III). A list of CFR Titles, Chapters, and Parts and an alphabetical list of agencies publishing in the CFR are also included in this volume.

An index to the text of "Title 3—The President" is carried within that volume.

The Federal Register Index is issued monthly in cumulative form. This index is based on a consolidation of the "Contents" entries in the daily Federal Register.

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REPUBLICATION OF MATERIAL

There are no restrictions on the republication of material appearing in the Code of Federal Regulations.

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For a summary, legal interpretation, or other explanation of any regulation in this volume, contact the issuing agency. Inquiries concerning editing procedures and reference assistance with respect to the Code of Federal Regulations may be addressed to the Director, Office of the Federal Register, National Archives and Records Administration, Washington, D.C. 20408 (telephone 202-523-3517). Sales are handled exclusively by the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402 (telephone 202-783-3238).

MARTHA L. GIRARD,
Director,
Office of the Federal Register.

October 1, 1990.

THIS TITLE

Title 45—PUBLIC WELFARE is composed of four volumes. The parts in these volumes are arranged in the following order: Parts 1-199, 200-499, 500-1199, and 1200 to end. Volume one (Parts 1-199) contains all current regulations issued under Subtitle A—Department of Health and Human Services, General Administration. Volume two (Parts 200-499) contains all current regulations issued under Chapter II—Office of Family Assistance (Assistance Programs), Family Support Administration, Department of Health and Human Services, Chapter III—Office of Child Support Enforcement (Child Support Enforcement Program), Family Support Administration, Department of Health and Human Services, and Chapter IV—Office of Refugee Resettlement, Family Support Administration, Department of Health and Human Services. Volume three (Parts 500-1199) contains all current regulations issued under Chapter V—Foreign Claims Settlement Commission of the United States, Department of Justice, Chapter VI—National Science Foundation, Chapter VII—Commission on Civil Rights, Chapter VIII—Office of Personnel Management, Chapter X—Office of Community Services, Family Support Administration, Department of Health and Human Services, and Chapter XI—National Foundation on the Arts and the Humanities. Volume four (Part 1200-End) contains all current regulations issued under Chapter XII—ACTION, Chapter XIII—Office of Human Development Services, Department of Health and Human Services, Chapter XVI—Legal Services Corporation, Chapter XVII—National Commission on Libraries and Information Science, Chapter XVIII—Harry S Truman Scholarship Foundation, Chapter XX—Commision on the Bicentennial of the United States Constitution, Chapter XXI—Commission of Fine Arts, and Chapter XXII—Christopher Columbus Quincentenary Jubilee Commission. The contents of these volumes represent all of the current regulations codified under this title of the CFR as of October 1, 1990.

A subject index to 45 CFR Parts 680-684 appears in the Finding Aids section of the volume containing Parts 500-1199. Those amendments to Part 801—Voting Rights Program, Appendixes A, B, and D, which apply to Texas also appear in Spanish following Appendix D.

Redesignation tables appear in the Finding Aids section of each volume. A derivation table relating to the disposition of sections in Part 101 appears in the first volume.

For this volume Linda L. Jones was Chief Editor. The Code of Federal Regulations publication program is under the direction of Richard L. Claypoole, assisted by Alomha S. Morris.

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Title 45—Public Welfare

(This book contains Parts 200 to 499)

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AUTHORITY: Sections 3, 403, 1003, 1102, 1403, 1603 of the Social Security Act, as amended; 49 Stat. 621, as amended; 49 Stat. 628, as amended; 49 Stat. 646, as amended; 49 Stat. 647, as amended; 64 Stat. 556, as amended; 76 Stat. 200, as amended; 42 U.S.C. 303, 603, 1203, 1302, 1353, and 1383 (note).

SOURCE: 35 FR 12180, July 29, 1970, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes affecting this part appear at 53 FR 36579, Sept. 21, 1988.

§ 201.0 Scope and applicability.

Titles I, X, XIV and XVI (as in effect without regard to section 301 of the Social Security Amendments of 1972) shall continue to apply to Puerto Rico, the Virgin Islands, and Guam. The term "State" as used in such titles means Puerto Rico, the Virgin Islands, and Guam.

[39 FR 8326, Mar. 5, 1974]

§ 201.1 General definitions.

When used in this chapter, unless the context otherwise indicates:

(a) "Act" means the Social Security Act, and titles referred to are titles of that Act;

(b) "Department" means the Department of Health and Human Services;

(c) "Administrator" means the Administrator, Family Support Administration;

(d) "Secretary" means the Secretary of Health and Human Services;

(e) " Administration" means the Family Support Administration;

(f) "Regional Administrator" means the Regional Administrator of the Family Support Administration;

(g) "State" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam;

(h) "State agency" means the State agency administering or supervising the administration of the State plan under title I, IV-A, X, or XVI (AABD) of the Act;

(i) The terms "regional office" and "central office" refer to the regional offices and the central office of the Family Support Administration, respectively.

[35 FR 12180, July 29, 1970, as amended at 39 FR 34543, Sept. 26, 1974; 39 FR 36114, Oct. 8, 1974; 53 FR 36578, Sept. 21, 1988]

Subpart A—Approval of State Plans and Certification of Grants

§ 201.2 General.

The State plan is a comprehensive statement submitted by the State agency describing the nature and scope of its program and giving assurance that it will be administered in conformity with the specific requirements stipulated in the pertinent title of the Act, the regulations in Subtitle A and this chapter of this title, and other applicable official issuances of the Department. The State plan contains all information necessary for the Administration to determine whether the plan can be approved, as a basis for Federal financial participation in the State program.

[35 FR 12180, July 29, 1970, as amended at 53 FR 36578, Sept. 21, 1988]

§ 201.3 Approval of State plans and amendments.

The State plan consists of written documents furnished by the State to cover each of its programs under the Act: Old-age assistance (title I); aid and services to needy families with children (Part A of title IV); aid to the blind (title X); aid to the permanently and totally disabled (title XIV); or aid to the aged, blind or disabled (title XVI). The State may submit the common material on more than one program as an integrated plan. However, it must identify the provisions pertinent to each title since a separate plan must be approved for each public assistance title. A plan submitted under title XVI encompasses, under a single plan, the programs otherwise covered by three separate plans under titles I, X, and XIV. After approval of the original plan by the Administration, all relevant changes, required by new statutes, rules, regulations, interpretations, and court decisions, are required to be submitted currently so that the Administration may determine whether the plan continues to meet Federal requirements and policies.

(a) *Submittal.* State plans and revisions of the plans are submitted first to the State governor or his designee for review in accordance with § 204.1 of this chapter, and then to the regional office. The States are encouraged to obtain consultation of the regional staff when a plan is in process of preparation or revision.

(b) *Review.* Staff in the regional offices are responsible for review of State plans and amendments. They also initiate discussion with the State agency on clarification of significant aspects of the plan which come to their attention in the course of this review. State plan material on which the regional staff has questions concerning the application of Federal policy is referred with recommendations as required to the central office for technical assistance. Comments and suggestions, including those of consultants in specified areas, may be prepared by the central office for use by the regional staff in negotiations with the State agency.

(c) *Action.* The Regional Administrator, exercised delegated authority to take affirmative action on State plans and amendments thereto on the basis of policy statements or precedents previously approved by the Administrator. The Administrator retains authority for determining that proposed plan material is not approvable, or that a previously approved plan no longer meets the requirements for approval, except that a final determination of disapproval may not be made without prior consultation and discussion by the Administrator with the Secretary. The Regional Administrator, or the Administrator formally notifies the State agency of the actions taken on State plans or revisions.

(d) *Basis for approval.* Determinations as to whether State plans (including plan amendments and administrative practice under the plans) originally meet or continue to meet, the requirements for approval are based on relevant Federal statutes and regulations. Guidelines are furnished to assist in the interpretation of the regulations.

(e) *Prompt approval of State plans.* Pursuant to section 1116 of the Act, the determination as to whether a State plan submitted for approval conforms to the requirements for approval under the Act and regulations issued pursuant thereto shall be made promptly and not later than the 90th day following the date on which the plan submittal is received in the regional office, unless the Regional Administrator, has secured from the State agency a written agreement to extend that period.

(f) *Prompt approval of plan amendments.* Any amendment of an approved State plan may, at the option of the State, be considered as a submission of a new State plan. If the State requests that such amendment be so considered the determination as to its conformity with the requirements for approval shall be made promptly and not later than the 90th day following the date on which such a request is received in the regional office with respect to an amendment that has been received in such office, unless the Regional Administrator, has secured from the State agency a written agreement to extend that period. In absence of request by a State that an amendment of an approved State plan shall be considered as a submission of a new State plan, the procedures under § 201.6 (a) and (b) shall be applicable.

(g) *Effective date.* The effective date of a new plan may not be earlier than the first day of the calendar quarter in which an approvable plan is submitted, and with respect to expenditures for assistance under such plan, may not be earlier than the first day on which the plan is in operation on a statewide basis. The same applies with respect to plan amendments that provide additional assistance or services to persons eligible under the approved plan or that make new groups eligible for assistance or services provided under the approved plan. For other plan amendments the effective date shall be as specified in other sections of this chapter.

[35 FR 12180, July 29, 1970, as amended at 39 FR 34542, Sept. 26, 1974; 42 FR 43977, Sept. 1, 1977; 53 FR 36579, Sept. 21, 1988]

§ 201.4 Administrative review of certain administrative decisions.

Pursuant to section 1116 of the Act, any State dissatisfied with a determination of the Administrator pursuant to § 201.3 (e) or (f) with respect to any plan or amendment may, within 60 days after the date of receipt of notification of such determination, file a petition with the Regional Administrator, asking the Administrator for reconsideration of the issue of whether such plan or amendment conforms to the requirements for approval under the Act and pertinent Federal requirements. Within 30 days after receipt of such a petition, the Administrator shall notify the State of the time and place at which the hearing for the purpose of reconsidering such issue will be held. Such hearing shall be held not less than 30 days nor more than 60 days after the date notice of such hearing is furnished to the State, unless the Administrator and the State agree in writing on another time. For hearing procedures, see Part 213 of this chapter. A determination affirming, modifying, or reversing the Administrator's original decision will be made within 60 days of the conclusion of the hearing. Action pursuant to an initial determination by the Administrator described in such § 201.3 (e) or (f) that a plan or amendment is not approvable shall not be stayed pending the reconsideration, but in the event that the Administrator subsequently determines that his original decision was incorrect he shall certify restitution forthwith in a lump sum of any funds incorrectly withheld or otherwise denied.

[35 FR 12180, July 29, 1970, as amended at 42 FR 43977, Sept. 1, 1977; 53 FR 36579, Sept. 21, 1988]

§ 201.5 Grants.

To States with approved plans, grants are made each quarter for expenditures under the plan for assistance, services, training and administration. The determination as to the amount of a grant to be made to a State is based upon documents submitted by the State agency containing information required under the Act and such other pertinent facts, including title IV-A the appropriate Federal share of child support collections made by the State, as may be found necessary.

(a) *Form and manner of submittal.* (1) Time and place: The estimates for public assistance grants for each quarterly period must be forwarded to the regional office 45 days prior to the period of the estimate. They include a certification of State funds available and a justification statement in support of the estimates. A statement of quarterly expenditures and any necessary supporting schedules must be forwarded to the Department of Health and Human Services, Family Support Administration, not later than 30 days after the end of the quarter.

(2) Description of forms: "State Agency Expenditure Projection—Quarterly Projection by Program" represents the State agency's estimate of the total amount and the Federal share of expenditures for assistance, services, training, and administration to be made during the quarter for each of the public assistance programs

under the Act. From these estimates the State and Federal shares of the total expenditures are computed. The State's computed share of total estimated expenditures is the amount of State and local funds necessary for the quarter. The Federal share is the basis for the funds to be advanced for the quarter. The State agency must also certify, on this form or otherwise, the amount of State funds (exclusive of any balance of advances received from the Federal Government) actually on hand and available for expenditure; this certification must be signed by the executive officer of the State agency submitting the estimate or a person officially designated by him, or by a fiscal officer of the State if required by State law or regulation. (A form "Certificate of Availability of State Funds for Assistance and Administration during Quarter" is available for submitting this information, but its use is optional.) If the amount of State funds (or State and local funds if localities participate in the program), shown as available for expenditures is not sufficient to cover the State's proportionate share of the amount estimated to be expended, the certification must contain a statement showing the source from which the amount of the deficiency is expected to be derived and the time when this amount is expected to be made available.

(3) The State agency must also submit a quarterly statement of expenditures for each of the public assistance programs under the Act. This is an accounting statement of the disposition of the Federal funds granted for past periods and provides the basis for making the adjustments necessary when the State's estimate for any prior quarter was greater or less than the amount the State actually expended in that quarter. The statement of expenditures also shows the share of the Federal Government in any recoupment, from whatever source, including for title IV-A the appropriate share of child support collections made by the State, of expenditures claimed in a prior period, and also in expenditures not properly subject to Federal financial participation which are acknowledged by the State agency, including the share of the Federal Government for uncashed and cancelled checks as described at 45 CFR 201.67 and replacement checks as described at 45 CFR 201.70 in this part, or which have been revealed in the course of an audit.

(b) *Review.* The State's estimates are analyzed by the regional office staff and are forwarded with recommendations as required to the central office. The central office reviews the State's estimate, other relevant information, and any adjustments to be made for prior periods, and computes the grant.

(c) *Grant award.* The grant award computation form shows, by program, the amount of the estimate for the ensuing quarter, and the amounts by which the estimate is reduced or increased because of over- or under-estimate for the prior quarter and for other adjustments. This form is transmitted to the State agency to draw the amount of the grant award, as needed, to meet the Federal share of disbursements. The draw is through a commercial bank and the Federal Reserve system against a continuing letter of credit certified to the Secretary of the Treasury in favor of the State payee. A copy of the grant award notice is sent to the State Central Information Reception Agency in accord with section 201 of the Intergovernmental Cooperation Act of 1968.

(d) *Letter of credit payment system.* The letter of credit system for payment of advances of Federal funds was established pursuant to Treasury Department regulations (Circular No. 1075), published in the FEDERAL REGISTER on July 11, 1967 (32 FR 10201). The HEW "Instructions to Recipient Organizations for Use of Letter of Credit" was transmitted to all grantees by memorandum from the Assistant Secretary-Comptroller on January 15, 1968.

(e) *General administrative requirements.* With the following exceptions, the provisions of Part 74 of this title, establishing uniform administrative requirements and cost principles, shall apply to all grants made to States under this part:

45 CFR PART 74

Subpart G—Matching and Cost Sharing.
Subpart I—Financial Reporting Requirements.

[35 FR 12180, July 29, 1970, as amended at 38 FR 26320, Sept. 19, 1973; 46 FR 48003, Sept. 30, 1981; 53 FR 24269, June 28, 1988; 53 FR 36579, Sept. 21, 1988]

§ 201.6 Withholding of payment; reduction of Federal financial participation in the costs of social services and training.

(a) *When withheld.* Further payments to a State are withheld in whole or in part if the Administrator, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of an approved plan, finds:

(1) That the plan no longer complies with the provisions of section 2, 402, 1002, 1402, or 1602 of the Act; or

(2) That in the administration of the plan there is failure to comply substantially with any such provision.

A question of noncompliance of a State plan may arise from an unapprovable change in the approved State plan, the failure of the State to change its approved plan to conform to a new Federal requirement for approval of State plans, or the failure of the State in practice to comply with a Federal requirement, whether or not its State plan has been amended to conform to such requirement.

(b) *When the rate of Federal financial participation is reduced.* Under title I, X, XIV, or XVI (AABD) of the Act, Federal financial participation in the costs of social services and training approved at the rate of 75 per centum is reduced to 50 per centum if the Administrator, after reasonable notice and opportunity for a hearing to the State agency, finds:

(1) That the plan provision under such title for prescribed services no longer complies with the Federal requirements with respect to such prescribed services; or

(2) That in the administration of the plan there is a failure to comply substantially with such plan provision.

(c) *Information discussions.* Hearings with respect to matters under paragraph (a) or (b) of this section are generally not called, however, until after reasonable effort has been made by the Administration to resolve the questions involved by conference and discussion with State officials. Formal notification of the date and place of hearing does not foreclose further negotiations with State officials.

(d) *Conduct of hearings.* For hearing procedures, see Part 213 of this chapter.

(e) *Notification of withholding.* If the Administrator makes a finding of noncompliance with respect to a matter under paragraph (a) of this section, the State agency is notified that further payments will not be made to the State (or, in his discretion, that payments will be limited to categories under or parts of the plan not affected by such failure), until the Administrator is satisfied that there will no longer be any such failure to comply. Until he is so satisfied, no further payments will be made to the State (or will be limited to categories under or parts of the plan not affected by such failure).

(f) *Notification of reduction in the rate of Federal financial participation.* If the Administrator makes a finding of noncompliance with respect to a matter under paragraph (b) of this section, the State agency is notified that further payments will be made to the State at the rate of 50 per centum of the costs of services and training, until the Administrator is satisfied that there will no longer be any failure to comply.

[35 FR 12180, July 29, 1970, as amended at 39 FR 34542, Sept. 26, 1974; 53 FR 36579, Sept. 21, 1988]

§ 201.7 Judicial review.

Any State dissatisfied with a final determination of the Secretary pursuant to § 201.4 or § 201.6(a) may, within 60 days after it has been notified of such determination, file with the U.S. Court of Appeals for the circuit in which such State is located a petition for review of such determination. After a copy of the petition is transmitted by the clerk of the court to the Secretary, the Secretary thereupon shall file in the court the record of proceedings upon which such determination was based as provided in section 2112 of title 28, United States Code. The court is bound by the Secretary's findings of fact, if supported by substantial evidence. The court has jurisdiction to affirm the Secretary's decision, or set it aside in whole or in part, or, for good cause, to remand the case for additional evidence. If the case is remanded, the Secretary may thereupon make new or modified findings of fact, and may modify his previous determination. The Secretary shall certify to the court the transcript and record of the further proceedings. The judgment of the court is subject to review by the Supreme Court of the United States upon certiorari or certification as provided in 28 U.S.C. 1254.

Subpart B—Review and Audits

§ 201.10 Review of State and local administration.

(a) In order to provide a basis for determining that State agencies are adhering to Federal requirements and to the substantive legal and administrative provisions of their approved plans, the Administration conducts a review of State and local public assistance administration. This review includes analysis of procedures and policies of State and local agencies and examination of case records of individual recipients.

(b) Each State agency is required to carry out a continuing quality control program primarily covering determination of eligibility in statistically selected samples of individual cases. The Service conducts a continuing observation of these State systems.

(c) Adherence to other Federal requirements set forth in the pertinent titles of the Act and the regulations in this title is evaluated through review of selected case records and aspects of agency operations.

[35 FR 12180, July 29, 1970, as amended at 53 FR 36579, Sept. 21, 1988]

§ 201.11 Personnel merit system review.

A personnel merit system review is carried out by the Office of State Merit Systems of the Office of the Assistant Secretary for Administration of the Department. The purpose of the review is to evaluate the effectiveness of the State merit system relating to the public assistance programs and to determine whether there is compliance with Federal requirements in the administration of the merit system plan. See Part 70 of this title.

§ 201.12 Public assistance audits.

(a) Annually, or at such frequencies as are considered necessary and appropriate, the operations of the State agency are audited by representatives of the Audit Agency of the Department. Such audits are made to determine whether the State agency is being operated in a manner that:

(1) Encourages prudent use of program funds, and

(2) Provides a reasonable degree of assurance that funds are being properly expended, and for the purposes for which appropriated and provided for under the related Act and State plan, including State laws and regulations.

(b) Reports of these audits are released by the Audit Agency simultaneously to program officials of the Department, and to the cognizant State officials. These audit reports relate the opinion of the Audit Agency on the practices reviewed and the allowability of costs audited at the State agency. Final determinations as to actions required on all matters reported are made by cognizant officials of the Department.

§ 201.13 Action on audit and review findings.

(a) If the audit results in no exceptions, the State agency is advised by letter of this result. The general course for the disposition of proposed exceptions resulting from audits involves the submittal of details of these exceptions to the State agency which then has an opportunity to concur in the proposed exceptions or to assemble and submit additional facts for purposes of clearance. Provision is made for the State agency to appeal proposed audit exceptions in which it has not concurred and which have not been deleted on the basis of clearance material. After consideration of a State agency's appeal by the Administrator, the Administration advises the

State agency of any expenditures in which the Federal Government may not participate and requests it to include the amount as adjustments in a subsequent statement of expenditures. Expenditures in which it is found the Federal Government may not participate and which are not properly adjusted through the State's claim will be deducted from subsequent grants made to the State agency.

(b) If the Federal or State reviews reveal serious problems with respect to compliance with any Federal requirement, the State agency is required to correct its practice so that there will be no recurrence of the problem in the future.

[35 FR 12180, July 29, 1970, as amended at 53 FR 36579, Sept. 21, 1988]

§ 201.14 Reconsideration under section 1116(d) of the Act.

(a) *Applicability.* This section applies to any disallowance of any item or class of items for which FFP is claimed under title I, IV, X, XIV, XVI(AABD), or XX of the Act, with respect to which reconsideration was requested prior to March 6, 1978, unless the State by filing a written notice to that effect with the Executive Secretary, Departmental Grant Appeals Board (with proof of service on the head of the constituent agency), within 30 days after mailing of the confirmation of the disallowance by the agency head, elects to have the reconsideration governed by 45 CFR Part 16.

(1) Reduction of the Federal share of assistance payments under title IV-A, for failure to certify WIN registrants (section 402(e) of the Act);

(2) Reduction by one per centum of the quarterly amount payable to a State for all expenditures under title IV-A for failure, in certain cases, to carry out the provisions of section 402(a)(15) of the Act which require the offering of and arrangement for the provision of family planning services (section 402(f) of the Act);

(3)—(5) [Reserved]

(6) Any other decision pursuant to sections 3, 403, 422, 455, 1003, 1403, 1603, or 2003, of the Act.

(b) *Notice of disallowance determination.* (1) When the Regional Administrator, determines that a State claim for FFP in expenditures for a particular item or class of items is not allowable, he shall promptly issue a disallowance letter to the State.

(2) This disallowance letter shall include where appropriate:

(i) The date or dates on which the State's claim for FFP was made;

(ii) The time period during which the expenditures in question were made or claimed to have been made;

(iii) The date and amount of any payment or notice of deferral;

(iv) A statement of the amount of FFP claimed, allowed, and disallowed and the manner in which these amounts were calculated;

(v) Findings of fact on which the disallowance determination is based or a reference to other documents previously or contemporaneously furnished to the State (such as a report of a financial review or audit) which contain the findings of fact on which the disallowance determination is based;

(vi) Pertinent citations to the law, regulations, guides and instructions supporting the action taken; and

(vii) Notice of the State's right to request reconsideration of the disallowance under this section and the time within such request must be made.

(c) *Request for reconsideration.* (1) To obtain reconsideration of a disallowance of an item or class of items for FFP, a State shall, within 30 days of the date of the disallowance letter, request reconsideration by the Administrator, with copy to the Regional Administrator, and enclose a copy of the disallowance letter.

(2) The request for reconsideration must be accompanied by a brief statement of the issues in dispute, including an explanation of the State's position with respect to each issue.

(d) *Reconsideration procedures.* (1) The Administrator will promptly acknowledge receipt of a State's request for reconsideration.

(2) Upon receipt of a copy of the request for reconsideration, the Regional Administrator, shall, within 30 days of the request, provide to the Administrator a complete record of all material which he believes to have a bearing on the reconsideration, including any

reports of audit or review which were the basis for his decision.

(3) The Administrator shall promptly forward to the State a list of all items currently in the record, including those received from the Regional Administrator, or with respect to the medical assistance program under title XIX, Regional Medicaid Director and make available for examination, inspection and copying any such items not previously received by the State.

(4) Within 60 days from the date of the Administrator's transmittal to the State under paragraph (d)(3) of this section, the State shall submit in writing to the Administrator any new relevant evidence, documentation, or argument and shall simultaneously submit a copy thereof to the Regional Administrator, or with respect to the medical assistance program under title XIX, Regional Medicaid Director.

(5) The Regional Administrator, or with respect to the medical assistance program under title XIX, Regional Medicaid Director shall, within 60 days of submittal by the State, submit to the Administrator (with a copy to the State) an analysis of the issues relevant to the disallowance including:

(i) A restatement of the findings on which the disallowance was based;

(ii) A response to each issue raised by the State with respect to such findings;

(iii) A response to any other issues raised by the State, providing additional documentation when necessary; and

(iv) Any additional documentation which he deems relevant.

(6) The State may respond to the material submitted by the Regional Administrator, or with respect to the medical assistance program under title XIX, Regional Medicaid Director by submitting to the Administrator within 15 days any supplemental material the State wishes to have entered into the record.

(7) At the time of submitting any additional material pursuant to paragraph (d)(4), the State may obtain, upon request to him, a conference with the Administrator, during which it may discuss with the Administrator its position on the issues. The State may, at its own expense, have such conference transcribed; the transcript shall become part of the administrative record.

(8) In reconsidering the disallowance, the Administrator may request any additional information or documents necessary to his decision.

(9) New relevant evidence received into the record by the Administrator pursuant to paragraph (d)(8) of this section which is not received from, or previously otherwise made available to, the State shall promptly be made available to the State for examination, inspection, and copying and the State will be given appropriate additional time for comment.

(10) All documents, reports, correspondence, and other materials considered by the Administrator in reaching his decision shall constitute the record of the reconsideration proceedings.

(11) After consideration of such record and the laws and regulations pertinent to the issues in question, the Administrator shall issue a written decision, based on the administrative record, which summarizes the facts and cites the regulations or statutes that support the decision. The decision shall constitute final administrative action on the matter and shall be promptly mailed to the head of the State agency.

(12) Either the state or the Regional Administrator, or with respect to the medical assistance program under title XIX, Regional Medicaid Director may request from the Administrator, for good cause, an extension of any of the time limits specified in this section.

(13) No section of this regulation shall be interpreted as waiving the Department's right to assert any provision or exemption in the Freedom of Information Act.

(e) *Implementation of the decision.* If the decision requires an adjustment in the Federal share, either upward or downward, this will be reflected in subsequent grant awards.

(f) For purposes of this section, the Administrator includes the Deputy Administrator, except that whichever official conducts the conference requested pursuant to paragraph (d)(7) of this section will also issue the final administrative decision pursuant to paragraph (d)(11) of this section.

APPENDIX—RECONSIDERATION OF DISALLOWANCES UNDER SECTION 1116(D) OF THE SOCIAL SECURITY ACT

TRANSFER OF FUNCTIONS

Under the authority of Reorganization Plan No. 1 of 1953, and pursuant to the authorities vested in me as Secretary of Health amd Human Services, I hereby order that, with respect to reconsiderations of disallowances imposed under titles I, IV, VI, X, XIV, XVI (AABD), XIX and XX of the Social Security Act, 42 U.S.C. 301 *et seq.*, 601 *et seq.*, 801 *et seq.*, 1201 *et seq.*, 1351 *et seq.*, 1381 *et seq.* (AABD), 1396 *et seq.* and 1397 *et seq.*, all references to "Administrator" appearing in 45 CFR 201.14 shall be deemed to read "Chairman, Departmental Grant Appeals Board" and all references to "Deputy Administrator" appearing therein shall be deemed to refer to one or more members of the Departmental Grant Appeals Board, designated by the Chairman to decide a reconsideration. States which have previously had or requested a conference pursuant to 45 CFR 201.14(d)(7) will be entitled to a conference with the Chairman of the Departmental Grant Appeals Board acting (as provided above) as successor to the Administrator of the Social and Rehabilitation Service (SRS), or with a member or members of the Board designated by the Chairman to decide the matter, acting as successor to the Deputy Administrator of SRS. The Chairman may, at his option, utilize a Grant Appeals Panel, designated pursuant to 45 CFR 516.4(b), to decide the matter, and may supplement the § 201.14 procedures by utilizing the procedures of 45 CFR Part 16 including the authority provided in 45 CFR 16.51 to waive or modify any procedural provision upon a determination that no party will be prejudiced and that the ends of justice will be served.

[40 FR 34592, Aug. 18, 1975; 40 FR 44326, Sept. 26, 1975, as amended at 41 FR 42205, Sept. 27, 1976; 42 FR 43977, Sept. 1, 1977; 42 FR 51583, Sept. 29, 1977; 43 FR 9266, Mar. 6, 1978; 51 FR 9202, Mar. 18, 1986; 53 FR 36579, Sept. 21, 1988]

§ 201.15 Deferral of claims for Federal financial participation.

(a) *Scope.* Except as otherwise provided, this section applies to all claims for Federal financial participation submitted by States pursuant to titles I, IV, X, XIV, XVI (AABD), of the Social Security Act.

(b) *Definitions.* (1) *"Deferral Action"* means the process of suspending payment with respect to a claim within the scope of paragraph (a) of this section, pending the receipt and analysis of further information relating to the allowability of the claim, under the procedures specified in this section.

(2) *"Deferred claim"* means a claim within the scope of paragraph (a) of this section upon which a deferral action has been taken.

(c) *Procedures.* (1) A claim or any portion of a claim for reimbursement for expenditures reported on the Quarterly Statement of Expenditures shall be deferred only when the Regional Administrator believes the claim or a specific portion of the claim is of questionable allowability. The deferral action will be taken within 60 days after receipt of a Quarterly Statement of Expenditures prepared in accordance with instructions issued by the Administration.

(2) When deferral action is taken on a claim, the Regional Administrator or the Administrator will within 15 days send written notice to the State identifying the type and amount of the claim and the reason for deferral. In the written notice of the deferral action, the Regional Administrator or the Administrator will request the State to make available for inspection all documents and materials which the Regional office then believes necessary to determine the allowability of the claim.

(3) Within 60 days of receipt of the notice of deferral action described in paragraph (c)(2) of this section the State shall make available to the Regional office, in readily reviewable form, all requested documents and materials, or when necessary, shall identify those documents and items of information which are not available. If the State requires additional time to make the documents and material available, it shall upon request be given an additional 60 days.

(4) The Regional office will normally initiate the review within 30 days of the date that materials become available for review.

(5) If the Regional Administrator finds that the documents and materials are not in readily reviewable form or that supplemental information is required, he will promptly notify the State. The State will have 15 days from the date of notification to complete the action requested. If the Re-

gional Commissioner or the Administrator finds that the documents necessary to determine the allowability of the claim are not made available within the allowed time limits, or that the documents are not made available in readily reviewable form, he shall promptly disallow the claim.

(6) The Regional Administrator or the Administrator will have 90 days after all documentation is available in readily reviewable form to determine the allowability of the deferred claim. If he is unable to complete the review within the time period the claim will be paid subject to a later determination of allowability.

(7) It is the responsibility of the State agency to establish the allowability of a deferred claim.

(8) The Regional Office or the Administrator will notify the State in writing of the decision on the allowability of the deferred claim.

(9) If a deferred claim is disallowed, the Regional Administrator or the Administrator shall advise the State of its right to reconsideration pursuant to § 201.14.

(10) A decision to pay a deferred claim shall not preclude a subsequent disallowance as a result of an audit exception or financial management review. If a subsequent disallowance should occur, the State, upon request shall be granted reconsideration pursuant to § 201.14.

[41 FR 7104, Feb. 17, 1976, as amended at 42 FR 51583, Sept. 29, 1977; 47 FR 7669, Feb. 22, 1982; 53 FR 36579, Sept. 21, 1988]

§ 201.66 Repayment of Federal funds by installments.

(a) *Basic Conditions.* When a State has been reimbursed Federal funds for expenditures claimed under titles I, IV-A, X, XIV, XVI (AABD) which are later determined to be unallowable for Federal financial participation, the State may make repayment of such Federal funds in installments provided:

(1) The amount of the repayment exceeds 2½ percent of the estimated annual State share for the program in which the unallowable expenditure occurred as set forth in paragraph (b) of this section; and

(2) The State has notified the Regional Administrator in writing of its intent to make installment repayments. Such notice must be given prior to the time repayment of the total was otherwise due.

(b) *Criteria governing installment repayments.* (1) The number of quarters over which the repayment of the total unallowable expenditures will be made will be determined by the percentage the total of such repayment is of the estimated State share of the annual expenditures for the specific program against which the recovery is made, as follows:

Total repayment amount as percentage of State share of annual expenditures for the specific program	Number of quarters to make repayment
2.5 pct. or less	1
Greater than 2.5, but not greater than 5	2
Greater than 5, but not greater than 7.5	3
Greater than 7.5, but not greater than 10	4
Greater than 10, but not greater than 15	5
Greater than 15, but not greater than 20	6
Greater than 20 but not greater than 25	7
Greater than 25, but not greater than 30	8
Greater than 30, but not greater than 47.5	9
Greater than 47.5, but not greater than 65	10
Greater than 65, but not greater than 82.5	11
Greater than 82.5, but not greater than 100	12

The quarterly repayment amounts for each of the quarters in the repayment schedule shall not be less than the following percentages of the estimated State share of the annual expenditures for the program against which the recovery is made.

For each of the following quarters	Repayment installment may not be less than these percentages
1 to 4	2.5
5 to 8	5.0
9 to 12	17.5

If the State chooses to repay amounts representing higher percentages during the early quarters, any corresponding reduction in required minimum percentages would be applied first to the last scheduled payment, then to the next to the last payment, and so forth as necessary.

(2) The latest State Agency Statement of Financial Plan for AFDC submitted by the State shall be used to estimate the State's share of annual expenditures for the specific program in which the unallowable expenditures occurred. That estimated share shall be the sum of the State's share of the estimates (as shown on the latest State Agency Statement of Financial Plan for AFDC) for four quarters, beginning with the quarter in which the first installment is to be paid.

(3) In the case of a program terminated by law or by the State, the actual State share—rather than the estimate—shall be used for determining whether the amount of the repayment exceeds 2½% of the annual State share for the program. The annual State share in these cases will be determined using payments computable for Federal funding as reported for the program by the State on its Quarterly Statement of Expenditures reports submitted for the last four quarters preceding the date on which the program was terminated.

(4) Repayment shall be accomplished through adjustment in the quarterly grants over the period covered by the repayment schedule.

(5) The amount of the repayment for purpose of paragraphs (a) and (b) of this section may not include any amount previously approved for installment repayment.

(6) The repayment schedule may be extended beyond 12 quarterly installments if the total repayment amount exceeds 100% of the estimated State share of annual expenditures.

In these circumstances, the criteria in paragraphs (b) (1) and (2) or (3) of this section, as appropriate, shall be followed for repayment of the amount equal to 100% of the annual State share. The remaining amount of the repayment shall be in quarterly amounts not less than those for the 9th through 12th quarters.

(7) The amount of a retroactive claim to be paid a State will be offset against any amounts to be, or already being, repaid by the State in installments, under the same title of the Social Security Act. Under this provision the State may choose to:

(i) Suspend payments until the retroactive claim due the State has, in fact, been offset; or

(ii) Continue payments until the reduced amount of its debt (remaining after the offset), has been paid in full.

This second option would result in a shorter payment period.

A retroactive claim for the purpose of this regulation is a claim applicable to any period ending 12 months or more prior to the beginning of the quarter in which the payment is to be made by the Administration.

[42 FR 28884, June 6, 1977, as amended at 47 FR 7669, Feb. 22, 1982; 52 FR 273, Jan. 5, 1987; 53 FR 36579, Sept. 21, 1988]

§ 201.67 Treatment of uncashed or cancelled checks.

(a) *Purpose.* This section provides the rules to ensure that States refund the Federal portion of uncashed or cancelled (voided) checks under titles I, IV-A, X, XIV, and XVI (AABD).

(b) *Definitions.* As used in this section—"Check" means a check or warrant that the State or local agency uses to make a payment.

"Cancelled (voided) check" means a check issued by the State agency or local agency which prior to its being cashed is cancelled (voided) by State or local agency action, thus preventing disbursement of funds.

"Uncashed check" means a check issued by the State agency or local agency which has not been cashed by the payee.

(c) *Refund of Federal financial participation (FFP) for uncashed checks*—(1) *General provisions.* If a check remains uncashed beyond a period of 180 days from the date it was issued, i.e., the date of the check, it will no longer be regarded as an amount expended because no funds have actually been disbursed. If the State agency has claimed and received FFP for the amount of the uncashed check, it must refund the amount of FFP received.

(2) *Report of refund.* At the end of each calendar quarter, the State agency must identify those checks which remain uncashed beyond a period of 180 days after issuance. The State agency must report on the Quarterly Statement of Expenditures for

that quarter all FFP that it received for uncashed checks. Once reported on the Quarterly Statement of Expenditures for a quarter, an uncashed check is not to be reported on a subsequent Quarterly Statement of Expenditures. If an uncashed check is cashed after the refund is made, the State agency may submit a new claim for FFP.

(d) *Refund of FFP for cancelled (voided) checks*—(1) *General provisions.* If the State agency has claimed and received FFP for the amount of a cancelled (voided) check, it must refund the amount of FFP received.

(2) *Report of refund.* At the end of each calendar quarter, the State agency must identify those checks which were cancelled (voided). The State agency must report on the Quarterly Statement of Expenditures for that quarter all FFP received by the State agency for these checks. Once reported on the Quarterly Statement of Expenditures for a quarter, a cancelled (voided) check is not to be reported on a subsequent Quarterly Statement of Expenditures.

[50 FR 37661, Sept. 17, 1985]

§ 201.70 Treatment of replacement checks.

(a) *Purpose.* This section provides the rules to ensure State do not claim Federal financial participation (FFP) for replacement checks under titles I, VI-A, X, XIV XVI (AABD) except under the circumstances specified in paragraph (c) of this section.

(b) *Definitions.* As used in this section—

"Check" means a check or warrant that the State or local agency uses to make a payment.

"Replacement check" means a check issued by the State or local agency to replace an earlier check.

(c) *Claiming of FFP for replacement checks.* The State agency may not claim FFP for the amount of a replacement check unless:

(1) It makes no claim for FFP for the earlier check;

(2) The earlier check has been cancelled (voided) and FFP refunded, where claimed, pursuant to 45 CFR 201.67(d); or

(3) The earlier check has been cashed and FFP has been refunded.

The State agency shall report the amount of the refund of FFP for the earlier check on the Quarterly Statement of Expenditures for the quarter no later than the quarter in which the replacement check is issued.

[53 FR 24269, June 28, 1988]

PART 204—GENERAL ADMINISTRATION–STATE PLANS AND GRANT APPEALS

Sec.

204.1 Submittal of State plans for Governor's review.
204.2 State plans—format.
204.4 Grant appeals.

EDITORIAL NOTE: Nomenclature changes affecting this part appear at 53 FR 36579, Sept. 21, 1988.

§ 204.1 Submittal of State plans for Governor's review.

A State plan under title I, IV-A, IV-B, X, XIV, XVI(AABD) of the Social Security Act, section 101 of the Rehabilitation Act of 1973, or title I of the Mental Retardation Facilities and Community Mental Health Centers Construction Act, must be submitted to the State Governor for his review and comments, and the State plan must provide that the Governor will be given opportunity to review State plan amendments and long-range program planning projections or other periodic reports thereon. This requirement does not apply to periodic statistical or budget and other fiscal reports. Under this requirement, the Office of the Governor will be afforded a specified period in which to review the material. Any comments made will be transmitted to the Family Support Administration with the documents.

(Sec. 1102, 49 Stat. 647 (42 U.S.C. 1302))

[39 FR 34542, Sept. 26, 1974, as amended at 53 FR 36579, Sept. 21, 1988]

§ 204.2 State plans—format.

State plans for Federally-assisted programs for which the Family Support Administration has responsibility must be submitted to the Administration in the format and containing the information prescribed by the Administration, and within time limits set in implementing instructions issued by the Administration. Such time limits will be adequate for proper preparation of plans and submittal in accordance with the requirements for State Governors' review (see § 204.1 of this chapter).

(Sec. 1102, 49 Stat. 647, 42 U.S.C. 1302; sec. 7(b), 68 Stat. 658, 29 U.S.C. 37(b); sec. 139, 84 Stat. 1323, 42 U.S.C. 2677(b))

[38 FR 16872, June 27, 1973, as amended at 53 FR 36579, Sept. 21, 1988]

§ 204.4 Grant appeals.

(a) *Scope.* This section applies to certain determinations (as set forth in Part 16, Appendix A, section C of this title), made with respect to direct, discretionary project grants awarded by the Family Support Administration, and such other grants or grant programs as the Administrator, with the approval of the Secretary, may designate. The statutory authority for current grant programs to which this section applies appears in the appendix to this section. This section is also applicable to determinations with respect to grants which were made under authority which has expired or been repealed since the grants were made, even though such authority does not appear in the appendix.

(b) *Submission.* (1) A grantee who has received notification, as described in § 16.3(b) and (c) of this title, of a determination described in Part 16, Appendix A, section C of this title, may request reconsideration by informing the Grants Appeals Officer as identified in the final adverse determination or otherwise designated by the Administrator, Family Support Administration, Washington, DC 20201 of the grantee's intent to contest the determination. The grantee's request for reconsideration must be postmarked no later than 30 days after the postmark date of the written notification of such determination, except when the Grant Appeals Officer grants an extension of time for good cause.

(2) Although the request need not follow any prescribed form, it shall clearly identify the question or questions in dispute and contain a full statement of the grantee's position with respect to such question or questions, and the pertinent facts and reasons in support of such position. The grantee shall attach to his submission a copy of the agency notification specified in § 16.3(b) of this title.

(c) *Action by the Administration on requests for reconsideration.* (1) Upon receipt of such an application the Grant Appeals Officer will inform the grantee that:

(i) His request is under review, and

(ii) If no decision is received within 90 days of the postmark date of the grantee's request for reconsideration, the determination may be appealed to the Departmental Grant Appeals Board.

(2) The Grant Appeals Officer will reconsider the determination appealed from, considering any material submitted by the grantee and any other material necessary.

(3) If the response to the grantee is adverse to the grantee's position, the response will include notification of the grantee's right to appeal to the Departmental Grant Appeals Board.

APPENDIX

This section is issued under sections 1, 5, 6, and 7 of Reorganization Plan No. 1 of 1953, 18 FR 2053, 67 Stat. 631 and is applicable to programs carried out under the following authorities:

(1) Section 222(a) and (b) of the Social Security Amendments of 1972 (Pub. L. 92-603).

(2) Section 426 of the Social Security Act (42 U.S.C. 262).

(3) Section 707 of the Social Security Act (42 U.S.C. 907).

(4) Section 1110 of the Social Security Act (42 U.S.C. 1310).

(5) Section 1115 of the Social Security Act (42 U.S.C. 1315).

(Secs. 1, 5, 6, 7 Reorganization Plan No. 1 of 1953, 67 Stat. 631)

[40 FR 51443, Nov. 5, 1975, as amended at 53 FR 36579, Sept. 21, 1988]

PART 205—GENERAL ADMINISTRATION—PUBLIC ASSISTANCE PROGRAMS

Sec.
205.5 Plan amendments.
205.10 Hearings.
205.25 Eligibility of supplemental security income beneficiaries for food stamps or surplus commodities.
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205.32 Procedures for issuance of replacement checks.
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205.45 Federal financial participation in relation to State emergency welfare preparedness.
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205.100 Single State agency.
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205.150 Cost allocation.
205.160 Non-expendable personal property.
205.170 State standards for office space, equipment, and facilities.
205.190 Standard-setting authority for institutions.

AUTHORITY: Secs. 402, 403, 406, 411, 1102, and 1106(a), Social Security Act (42 U.S.C. 602, 603, 606, 611, 1302, and 1306(a)); sec. 9101, Pub. L. 99-509, 100 Stat. 1972; sec. 202, Pub. L. 100-485, 102 Stat. 2377.

EDITORIAL NOTE: Nomenclature changes affecting this part appear at 53 FR 36579, Sept. 21, 1988.

§ 205.5 Plan amendments.

(a) *State plan requirements.* A State plan under title I, IV-A, X, XIV, or XVI (AABD) of the Social Security Act must provide that the plan will be amended whenever necessary to reflect new or revised Federal statutes or regulations, or material change in any phase of State law, organization, policy or State agency operation.

(b) *Federal financial participation.* Except where otherwise provided, Federal financial participation is available in the additional expenditures resulting from an amended provision of the State plan as of the first day of the calendar quarter in which an approvable amendment is submitted or the date on which the amended provision becomes effective in the State, whichever is later.

[39 FR 34542, Dec. 26, 1974, as amended at 53 FR 36579, Sept. 21, 1988]

§ 205.10 Hearings.

(a) *State plan requirements.* A State plan under title I, IV-A, X, XIV, or XVI(AABD) of the Social Security Act shall provide for a system of hearings under which:

(1) The single State agency responsible for the program shall be responsible for fulfillment of hearing provisions which shall provide for:

(i) A hearing before the State agency, or

(ii) An evidentiary hearing at the local level with a right of appeal to a State agency hearing. Where a State agency adopts a system of evidentiary hearings with an appeal to a State agency hearing, it may, in some political subdivisions, permit local evidentiary hearings, and in others, provide for a single hearing before the State agency. Under this requirement hearings shall meet the due process standards set forth in the U.S. Supreme Court decision in Goldberg v. Kelly, 397 U.S. 254 (1970) and the standards set forth in this section.

(2) Hearing procedures shall be issued and publicized by the State agency. Such procedures shall provide for a face-to-face hearing or, at State option, a hearing by telephone when the applicant or recipient also agrees. Under this provision, the State shall assure that the applicant or recipient is afforded all rights as specified in this section, whether the hearing is face-to-face or by telephone;

(3) Every applicant or recipient shall be informed in writing at the time of application and at the time of any action affecting his claim:

(i) Of his right to a hearing, as provided in paragraph (a)(5) of this section;

(ii) Of the method by which he may obtain a hearing;

(iii) That he may be represented by an authorized representative, such as legal counsel, relative, friend, or other spokesman, or he may represent himself.

(4) In cases of intended action to discontinue, terminate, suspend or reduce assistance or to change the manner or form of payment to a protective, vendor, or two-party payment under § 234.60:

(i) The State or local agency shall give timely and adequate notice, except as provided for in paragraphs (a)(4)(ii), (iii), or (iv) of this section. Under this requirement:

(A) "Timely" means that the notice is mailed at least 10 days before the date of action, that is, the date upon which the action would become effective;

(B) "Adequate" means a written notice that includes a statement of what action the agency intends to take, the reasons for the intended agency action, the specific regulations supporting such action, explanation of the individual's right to request an evidentiary hearing (if provided) and a State agency hearing, the circumstances under which assistance is continued if a hearing is requested, and if the agency action is upheld, that such assistance must be repaid under title IV-A, and must also be repaid under titles I, X, XIV or XVI (AABD) if the State plan provides for recovery of such payments.

(ii) The agency may dispense with timely notice but shall send adequate notice not later than the date of action when:

(A) The agency has factual information confirming the death of a recipient or of the AFDC payee when there is no relative available to serve as new payee;

(B) The agency receives a clear written statement signed by a recipient that he no longer wishes assistance, or that gives information which requires termination or reduction of assistance, and the recipient has indicated, in writing, that he understands that this must be the consequence of supplying such information;

(C) The recipient has been admitted or committed to an institution, and further payments to that individual do not qualify for Federal financial participation under the State plan;

(D) The recipient has been placed in skilled nursing care, intermediate care or long-term hospitalization;

(E) The claimant's whereabouts are unknown and agency mail directed to him has been returned by the post office indicating no known forwarding address. The claimant's check must, however, be made available to him if his whereabouts become known during the payment period covered by a returned check;

(F) A recipient has been accepted for assistance in a new jurisdiction and that fact has been established by the jurisdiction previously providing assistance;

(G) An AFDC child is removed from the home as a result of a judicial determination, or voluntarily placed in foster care by his legal guardian;

(H) For AFDC, the agency takes action because of information the recipient furnished in a monthly report or because the recipient has failed to submit a complete or a timely monthly report without good cause. (See § 233.37);

(I) A special allowance granted for a specific period is terminated and the recipient has been informed in writing at the time of initiation that the allowance shall automatically terminate at the end of the specified period;

(J) The agency has made a presumption of mismanagement as a result of a recipient's nonpayment of rent and provides for post hearings in such circumstances;

(iii) When changes in either State or Federal law require automatic grant adjustments for classes of recipients, timely notice of such grant adjustments shall be given which shall be "adequate" if it includes a statement of the intended action, the reasons for such intended action, a statement of the specific change in law requiring such action and a statement of the circumstances under which a hearing may be obtained and assistance continued.

(iv) When the agency obtains facts indicating that assistance should be discontinued, suspended, terminated, or reduced because of the probable fraud of the recipient, and, where possible, such facts have been verified through collateral sources, notice of such grant adjustment shall be timely if mailed at least five (5) days before action would become effective.

(5) An opportunity for a hearing shall be granted to any applicant who requests a hearing because his or her claim for financial assistance (including a request for supplemental payments under §§ 233.23 and 233.27) is denied, or is not acted upon with reasonable promptness, and to any recipient who is aggrieved by any agency action resulting in suspension, reduction, discontinuance, or termination of assistance, or determination that a protective, vendor, or two-party payment should be made or continued. A hearing need not be granted when either State or Federal law requires automatic grant adjustments for classes of recipients unless the reason for an individual appeal is incorrect grant computation.

(i) A request for a hearing is defined as a clear expression by the claimant (or his authorized representative acting for him), to the effect that he wants the opportunity to present his case to higher authority. The State may require that such request be in written form in order to be effective;

(ii) The freedom to make such a request shall not be limited or interfered with in any way. The agency may assist the claimant to submit and process his request;

(iii) The claimant shall be provided reasonable time, not to exceed 90 days, in which to appeal an agency action;

(iv) Agencies may respond to a series of individual requests for hearing by conducting a single group hearing. Agencies may consolidate only cases in which the sole issue involved is one of State or Federal law or policy or changes in State or Federal law. In all group hearings, the policies governing hearings must be followed. Thus, each individual claimant shall be permitted to present his own case or be represented by his authorized representative;

(v) The agency may deny or dismiss a request for a hearing where it has been withdrawn by the claimant in writing, where the sole issue is one of State or Federal law requiring automatic grant adjustments for classes of recipients, where a decision has been rendered after a WIN hearing before the manpower agency that a participant has, without good cause, refused to accept employment or participate in the WIN program, or has failed to request such a hearing after notice of intended action for such refusal, or where it is abandoned. Abandonment may be deemed to have occurred if the claimant, without good cause therefor, fails to appear by himself or by authorized representative at the hearing scheduled for such claimant.

(6) If the recipient requests a hearing within the timely notice period:

(i) Assistance shall not be suspended, reduced, discontinued or terminated (but is subject to recovery by the agency if its action is sustained), until a decision is rendered after a hearing, unless:

(A) A determination is made at the hearing that the sole issue is one of State or Federal law or policy, or change in State or Federal law and not one of incorrect grant computation;

(B) A change affecting the recipient's grant occurs while the hearing decision is pending and the recipient fails to request a hearing after notice of the change;

(C) The recipient specifically requests that he or she not receive continued assistance pending a hearing decision; or

(D) The agency has made a presumption of mismanagement as a result of a recipient's nonpayment of rent and provides for the opportunity for a hearing after the manner or form of payment has been changed for such cases in accordance with § 234.60 (a)(2) and (a)(11).

(ii) The agency shall promptly inform the claimant in writing if assistance is to be discontinued pending the hearing decision; and

(iii) In any case where the decision of an evidentiary hearing is adverse to the claimant, he shall be informed of and afforded the right to make a written request, within 15 days of the mailing of the notification of such adverse decision, for a State agency hearing and of his right to request a de novo hearing. Unless a de novo hearing is specifically requested by the appellant, the State agency hearing may consist of a review by the State agency hearing officer of the record of the evidentiary hearing to determine whether the decision of the evidentiary hearing officer was supported by substantial evidence in the record. Assistance shall not be continued after an adverse decision to the claimant at the evidentiary hearing.

(7) A State may provide that a hearing request made after the date of action (but during a period not in excess of 10 days following such date) shall result in reinstatement of assistance to be continued until the hearing decision, unless (i) the recipient specifically requests that continued assistance not be paid pending the hearing decision; or (ii) at the hearing it is determined that the sole issue is one of State or Federal law or policy. In any case where action was taken without timely notice, if the recipient requests a hearing within 10 days of the mailing of the notice of the action, and the agency determines that the action resulted from other than the application of State or Federal law or policy or a change in State or Federal law, assistance shall be reinstated and continued until a decision is rendered after the hearing, unless the recipient specifically requests that continued assistance not be paid pending the hearing decision.

(8) The hearing shall be conducted at a reasonable time, date, and place, and adequate preliminary written notice shall be given.

(9) Hearings shall be conducted by an impartial official (officials) or designee of the agency. Under this requirement, the hearing official (officials) or designee shall not have been directly involved in the initial determination of the action in question.

(10) When the hearing involves medical issues such as those concerning a diagnosis, an examining physician's report, or a medical review team's decision, a medical assessment other than that of the person or persons involved in making the original decision shall be obtained at agency expense and made part of the record if the hearing officer considers it necessary.

(11) In respect to Title IV-C, when the appeal has been taken on the basis of a disputed WIN registration requirement, exemption determination or finding of failure to appear for an appraisal interview, a representative of the local WIN manpower agency shall, where appropriate, participate in the conduct of the hearing.

(12) The hearing shall include consideration of:

(i) An agency action, or failure to act with reasonable promptness, on a claim for financial assistance, which includes undue delay in reaching a decision on eligibility or in making a payment, refusal to consider a request for or undue delay in making an adjustment in payment, and discontinuance, termination or reduction of such assistance;

(ii) Agency decision regarding:

(A) Eligibility for financial assistance in both initial and subsequent determinations,

(B) Amount of financial assistance or change in payments,

(C) The manner or form of payment, including restricted or protective payments, even though no Federal financial participation is claimed.

(13) The claimant, or his representative, shall have adequate opportunity:

(i) To examine the contents of his case file and all documents and records to be used by the agency at the hearing at a reasonable time before the date of the hearing as well as during the hearing;

(ii) At his option, to present his case himself or with the aid of an authorized representative;

(iii) To bring witnesses;

(iv) To establish all pertinent facts and circumstances;

(v) To advance any arguments without undue interference;

(vi) To question or refute any testimony or evidence, including opportunity to confront and cross-examine adverse witnesses.

(14) Recommendations or decisions of the hearing officer or panel shall be based exclusively on evidence and other material introduced at the hearing. The transcript or recording of testimony and exhibits, or an official report containing the substance of what transpired at the hearing, together with all papers and requests filed in the proceeding, and the recommendation or decision of the hearing officer or panel shall constitute the exclusive record and shall be available to the claimant at a place accessible to him or his representative at a reasonable time.

(15) Decisions by the hearing authority shall:

(i) In the event of an evidentiary hearing, consist of a memorandum decision summarizing the facts and identifying the regulations supporting the decision;

(ii) In the event of a State agency de novo hearing, specify the reasons for the decision and identify the supporting evidence and regulations.

Under this requirement no persons who participated in the local decision being appealed shall participate in a final administrative decision on such a case.

(16) Prompt, definitive, and final administrative action shall be taken within 90 days from the date of the request for a hearing.

(17) The claimant shall be notified of the decision in writing and, to the extent it is available to him, of his right to appeal to State agency hearing or judicial review.

(18) When the hearing decision is favorable to the claimant, or when the agency decides in favor of the claimant prior to the hearing, the agency shall promptly make corrective payments retroactively to the date the incorrect action was taken.

(19) All State agency hearing decisions shall be accessible to the public (subject to provisions of safeguarding public assistance information).

(b) *Federal financial participation.* Federal financial participation is available for the following items:

(1) Payments of assistance continued pending a hearing decision.

(2) Payments of assistance made to carry out hearing decisions, or to take corrective action after an appeal but prior to hearing, or to extend the benefit of a hearing decision or court order to others in the same situation as those directly affected by the decision or order. Such payments may be retroactive in accordance with applicable Federal policies on corrective payments.

(3) Payments of assistance within the scope of Federally aided public assistance programs made in accordance with a court order.

(4) Administrative costs incurred by the agency for:

(i) Providing transportation for the claimant, his representative and witnesses to and from the place of the hearing;

(ii) Meeting other expenditures incurred by the claimant in connection with the hearing;

(iii) Carrying out the hearing procedures, including expenses of obtaining an additional medical assessment.

[38 FR 22007, Aug. 15, 1973, as amended at 44 FR 17941, Mar. 23, 1979; 45 FR 20480, Mar. 28, 1980; 47 FR 5673, Feb. 5, 1982; 47 FR 47827, Oct 28, 1982; 51 FR 9202, Mar. 18, 1986; 53 FR 36579, Sept. 21, 1988]

§ 205.25 Eligibility of supplemental security income beneficiaries for food stamps or surplus commodities.

(a) In respect to any individual who is receiving supplemental security income benefits under Title XVI of the Social Security Act, the State agency shall make the following determinations:

(1) The amount of assistance such individual would have been entitled to receive for any month under the appropriate State plan in effect for De-

cember 1973, under Title I, X, XIV, or XVI, and for such purpose such individual shall be deemed to be aged, blind, or permanently and totally disabled, as the case may be, under the provisions of such plan.

(2) The bonus value of the food stamps (according to the Food Stamp Schedule effective for July 1973) such individual would have been entitled to receive for such month, assuming the individual were receiving the assistance determined under paragraph (a)(1) of this section.

(3) The amount of benefits such individual is receiving for such month under Title XVI, plus supplementary payments as defined in section 1616(a) of the Social Security Act and payments pursuant to section 212 of Pub. L. 93-66, if any.

(b) If the amount determined in paragraph (a)(1) of this section plus the amount determined in paragraph (a)(2) of this section exceeds the amount determined in paragraph (a)(3) of this section, such individual shall be eligible to participate in the food stamp program established by the Food Stamp Act of 1964 or surplus commodities distribution programs established by the Secretary of Agriculture pursuant to section 416 of the Agricultural Act of 1949, section 32 of Pub. L. 74-320, or any other law, in accordance with regulations and procedures established by the Secretary of Agriculture.

(c) For purposes of paragraph (a)(3) of this section, the State agency shall obtain the amount of the title XVI payment and the amount of any Federally administered State supplementary payment from the Social Security Administration.

(d) The State agency shall redetermine the eligibility of individuals to participate in the food stamp or surplus commodities distribution programs hereunder at such times as the Secretary of Agriculture requires recertification for such stamps or commodities.

[38 FR 34324, Dec. 13, 1973]

§ 205.30 Methods of administration.

State plan requirements: A State plan for financial assistance under title I, IV-A, X, XIV or XVI (AABD) of the Social Security Act must provide for such methods of administration as are found by the Secretary to be necessary for the proper and efficient operation of the plan.

[45 FR 56684, Aug. 25, 1980]

§ 205.32 Procedures for issuance of replacement checks.

(a) *State plan requirements.* A State plan under title IV-A of the Social Security Act shall provide that (1) procedures are in effect to ensure that no undue delays occur in issuing a replacement check; and (2) when applicable, prior to the issuance of a replacement check, the State agency must:

(i) Issue a stop payment order on the original AFDC check through appropriate banking procedures; and

(ii) Require recipients to execute a signed statement attesting to the nonreceipt, loss, or theft of the original FDC check. However, if obtaining such a statement from the recipient will cause the issuance of the check to be unduly delayed, the statement may be obtained within a reasonable time after the check is issued.

(b) *State option.* A State plan may provide that as a condition for issuance of a replacement check, a recipient is required to report a lost or stolen AFDC check to the police or other appropriate authorities. Under this provision, the State agency may require that the recipient verify that a report was made to the police or other appropriate authorities and, if so, the agency will establish procedures for such verification.

[51 FR 9203, Mar. 18, 1986]

§ 205.35 Mechanized claims processing and information retrieval systems; definitions.

Section 205.35 through 205.38 contain State plan requirements for an automated statewide management information system, conditions for FFP and responsibilities of the Family Support Administration (FSA). For purposes of §§ 205.35 through 205.38:

(a) "A mechanized claims processing and information retrieval system", hereafter referred to as an automated "application processing and information retrieval system" (APIRS), or the "system", means a system of software and hardware used:

(1) To introduce, control and account for data items in providing public assistance under the Aid to Families with Dependent Children (AFDC) State plan; and

(2) To retrieve and produce utilization and management information about such aid and services as required by the single State agency and Federal government for program administration and audit purposes.

(b) "Planning" means:

(1) The preliminary project activity to determine the requirements necessitating the project, the activities to be undertaken, and the resources required to complete the project;

(2) The preparation of an APD;

(3) The preparation of a detailed project plan describing when and how the computer system will be designed and developed; and

(4) The preparation of a detailed implementation plan describing specific training, testing, and conversion plans to install the computer system.

(c) The following terms are defined at 45 CFR part 95, subpart F, § 95.605:

"Annually updated advance automatic data processing planning document";
"Design" or "System Design";
"Development";
"Initial advance automatic data processing planning document";
"Installation";
"Operation"; and
"Software".

[51 FR 45330, Dec. 18, 1986, as amended at 53 FR 36579, Sept. 21, 1988; 55 FR 4379, Feb. 7, 1990]

§ 205.36 State plan requirements.

A State plan under title IV–A of the Social Security Act shall, at the option of the State, provide for the establishment and operation, in accordance with an (initial and annually updated) advance automatic data processing planning document approved by SSA, of an automated statewide management information system designed effectively and efficiently, to assist management in the administration of an approved AFDC State plan. The submission process to amend the State plan is explained in § 201.3. This system must be designed:

(a) To automatically control and account for—

(1) All the factors in the total eligibility determination process under the plan for aid, including but not limited to:

(i) Identifiable correlation factors (such as social security numbers, names, dates of birth, home addresses, and mailing addresses (including postal ZIP codes), of all applicants and recipients of AFDC and the relative with whom any child who is an applicant or recipient is living)).

(A) To assure sufficient compatibility among the systems of different jurisdictions, and

(B) To permit periodic screening to determine whether an individual is or has been receiving benefits from more than one jurisdiction.

(ii) Checking records of applicants and recipients of such aid on a periodic basis with other agencies, both intra and inter-state, for eligibility determination, verification and payment as required by other provisions of the Social Security Act.

(2) The costs, quality, and delivery of funds and services furnished to applicants for and recipients of such aid.

(b) To notify the appropriate State officials of child support, food stamp, social service, and medical assistance programs approved under title XIX whenever a case/recipient for aid and services becomes ineligible or the amount of aid or services is changed.

(c) To provide for security against unauthorized access to, or use of, the data in the system.

[51 FR 13006, Apr. 17, 1986]

§ 205.37 Responsibilities of the Social Security Administration (SSA).

(a) SSA shall not approve the initial and annually updated advance automatic data processing planning document unless the document, when implemented, will carry out the requirements of the law and the objectives of title IV–A (AFDC) Automated Application Processing and Information Retrieval System Guide. The initial advance automatic data processing planning document must include:

(1) A requirements analysis, including consideration of the program mission, functions, organization, services, constraints and current support relating to such system;

(2) A description of the proposed statewide management system, including the description of information flows, input data formats, output reports and uses;

(3) The security and interface requirements to be employed in such statewide management system;

(4) A description of the projected resource requirements including staff and other needs; and the resources available or expected to be available to meet these requirements;

(5) A cost benefit analysis of alternative systems designs, data processing services and equipment in terms of qualitative and quantitative measures. The alternative systems considered should include the advantages of the proposed system over the alternatives and should indicate the period of time the system will be operated to justify the funds invested. OFA certified systems that are already in place in other States must be included in the alternatives to be considered and evaluated;

(6) A plan for distribution of costs, containing the basis for rates, both direct and indirect, to be in effect under such a statewide management system;

(7) An implementation plan with charts of development events, testing description, proposed acceptance criteria, and backup and fallback procedures to handle possible failure of a system; and

(8) Evidence that the State's system will be compatible with those of the FSA to facilitate the exchange of data between the State and Federal system.

(b) FSA shall on a continuing basis, review, assess, and inspect the planning, design, and operation of, statewide management information systems, with a view to determining whether, and to what extent, these systems meet and continue to meet the requirements under these regulations.

(c) If FSA finds that any statewide management information system referred to in § 205.38 fails to comply substantially with criteria, requirements, and other undertakings prescribed by the approved advance automatic data processing planning document, approval of such document shall be suspended. The State will be given written notice of the suspension. The notice of suspension will state the reason for the suspension, whether the suspended system complies with the criteria for 50 percent FFP under 45 CFR Part 95, the actions required for future Federal funding, and the effective date of the suspension. The suspension shall be effective as of the date that the system failed to comply substantially with the approved APD. The suspension shall remain in effect until FSA makes a determination that such system complies with prescribed criteria, requirements, and other undertakings for future Federal funding. Should a State cease development of their approved system, either by voluntary withdrawal or as a result of Federal suspension, all Federal incentive funds invested to date that exceed the normal administrative FFP rate (50 percent) will be subject to recoupment.

(d) FSA shall provide technical assistance to States as is deemed necessary to assist States to plan, design, develop, or install and provide for the security of the management information systems.

(e) Approvals of the systems by FSA under the provisions of this section will be undertaken only as a result of State applications for increased matching. The requirements of 45 CFR Part 95, Subpart E and Subpart F apply.

[51 FR 13006, Apr. 17, 1986, as amended at 53 FR 36579, Sept. 21, 1988; 55 FR 4379, Feb. 7, 1990]

§ 205.38 Federal financial participation (FFP) for establishing a statewide mechanized system.

(a) Effective July 1, 1981, FFP is available at 90 percent of expenditures incurred for planning, design, development or installation of a statewide automated application processing and information retrieval system which are consistent with an approved ADP. The 90 percent FFP includes the purchase or rental of computer equipment and software directly required for and used in the operation of this system.

(b) FSA will approve the system provided the following conditions are met—

(1) FSA determines that the system is likely to provide more efficient, economical, and effective administration of the AFDC program.

(2) The system is compatible with the claims processing and information retrieval systems used in the administration of State plans approved under title XIX, and State programs where there is FFP under title XX.

(3) The system meets the requirements referred to in § 205.36.

(4) The system meets criteria established in the title IV-A (AFDC) Automated Application Processing and Information Retrieval System Guide issued by FSA and which provides specific standard requirements for major functions, such as automated eligibility determination, grant computation, verification, referral, management control, compability, and data security.

(5) The State agency certifies that—

(i) The State will have all ownership rights in software or modifications thereof and associated documentation designed or developed with 90 percent FFP under this section, except that the Department of Health and Human Services reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for Federal government purposes, such software, modifications, and documentation;

(ii) Methods and procedures for properly charging the cost of all systems whether acquired from public or private sources shall be in accordance with Federal regulations in Part 74 of this title and the applicable FSA title IV-A (AFDC) Automated Application Processing and Information Retrieval System Guide;

(iii) The complete system planned, designed, developed, installed, and hardware acquired, with FFP under these regulations will be used for a period of time which is consistent with the advance planning document as approved, or which FSA determines is sufficient to justify the Federal funds invested;

(iv) Information in the system will be safeguarded in accordance with applicable Federal law; and

(v) Access to the system in all of its aspects, including design, development, and operation, including work performed by any source, and including cost records of contractors and subcontractors, shall be made available to the Federal Government by the State at intervals deemed necessary by FSA to determine whether the conditions for approval are being met and to determine its efficiency, economy and effectiveness.

(c) If FSA suspends approval, as described in § 205.37, of the advance automated data processing planning document and/or system, FFP at the higher matching rate shall not be allowed for any costs incurred, until such time as the conditions for approval are met. Should the State fail to correct the deficiencies which led to the suspension within 90 days of the date of notification of suspension or within a longer period of time agreed to by both the State and FSA, all Federal incentive funds invested to date that exceed the normal administrative FFP rate (50 percent) will be disallowed.

(d) Should a State voluntarily withdraw its approved APD and cease development of the approved system, all Federal incentive funds invested to date that exceed the normal administrative FFP rate (50 percent) will be disallowed.

(e) Once a State is certified as having met the requirements referred to in § 205.36 incentive funding will not be allowable for enhancements or other modifications unless these modifications are authorized by the Office of Family Assistance as a result of Federal legislative or regulatory change.

[51 FR 13007, Apr. 17, 1986, as amended at 53 FR 36579, Sept. 21, 1988]

§ 205.40 Quality control system.

(a) *Definitions.* For purposes of this section, notwithstanding any other regulations in this chapter:

(1) *"Assistance unit"* means all individuals whose needs, income, and resources are considered in determining eligibility for, and the amount of, an assistance payment for which Federal financial participation is claimed under this chapter.

(2) *"Case error,"* for active cases, means an overpayment, underpayment, or payment to ineligibiles, as defined in this section; for negative case actions, means that the reason given by the agency for that action was incorrect. (For exceptions and special provisions, see paragraph (c) of this section.)

(3) *"Payment to ineligibles"* means a financial assistance payment received by or for an assistance unit, for the review month, when that assistance unit was not eligible for any part of the payment under permissible State practice in effect on the first day of the review month, even though the State agency had not made a finding of ineligibility under § 206.10(a)(5) of this chapter.

(4) *"Overpayment"* means a financial assistance payment received by or for an assistance unit, for the review month, which exceeds by at least $5.00 the amount for which that unit was eligible under permissible State practice in effect on the first day of the review month.

(5) *"Underpayment"* means a financial assistance payment received by or for an assistance unit for the review month which is at least $5.00 less than the amount for which that assistance unit under permissible State practice was eligible in effect on the first day of the review month.

(6) *"Review month"* means the specific calendar or fiscal month for which the assistance payment under review is received.

(7) *"Assistance payment"* means a single payment (or two successive payments, in States that pay on a semimonthly basis), received for a specific calendar or fiscal month.

(8) *"Permissible State practice"* means State written policy instructions that are consistent with the State plan or with plan amendments which have been submitted to, but have not been acted upon by the Department. In all instances where written instructions are not consistent with the State plan or proposed plan amendments, permissible State practice means the provisions of the State plan.

(9) *"Negative case action"* means an action to deny an application for assistance or to otherwise dispose of that application without a determination of eligibility (for instance, because the application was withdrawn or abandoned), or to terminate assistance.

(10) *"Disposed of case"* means that a decision was made on the eligibility and payment status of a case under review or that the case was dropped or listed in error.

(11) *"Edited review findings"* means that the findings on the review schedule have been screened to insure the data are both accurate and internally consistent.

(b) *State plan requirements.* A State plan under title IV-A or I, X, XIV or XVI (AABD) of the Social Security Act must provide for a continuing system of quality control for assuring that assistance is furnished in accordance with permissible State practice as defined in paragraph (a) of this section. Under this requirement:

(1) The State agency shall operate the quality control system in accordance with policies and procedures prescribed in the Quality Control Manuals issued by the Department. Specifically:

(i) It shall apply the prescribed sampling and methods and schedules.

(ii) It shall conduct field investigations, including a personal interview in all cases which fall within the sample of active cases, and as necessary for cases in the negative case action sample.

(iii) It shall provide the resources and methods necessary to analyze the findings of the system.

(iv) It shall take appropriate corrective action on improperly authorized or denied assistance and on the causes of improper actions.

(v) It shall assure access by HHS staff to State and local records relating to public assistance, to recipients, and to third parties, including information available under § 205.55.

(2) The State agency shall submit to the Department, in such form and at such times as it prescribes:

(i) A description of the State agency's sampling plan for active cases and for negative case actions, which is to be submitted to the Department no later than 60 days before the start of each sample period unless there has been no change in the State's sampling plan and it continues to meet Federal sampling requirements.

Where the State choose to reduce its active case sample below the standard sample size but not below the minimum sample size specified in the Quality Control Manual, the State must provide the Department with a statement, as part of its sampling plan, accepting the reliability of the reduced sample size and agreeing not to challenge the resulting AFDC and Medicaid error rates based on the size of the sample.

(ii)Edited review findings for the State agency's disposed of active case and negative case actions. The State shall input these findings into the computer terminal provided by the Federal government, and transmit the data to a designated host computer. For State agencies that do not have a terminal provided by the Federal government, the State agency shall submit the review findings in a format specified by the Department. The State agency shall dispose of and submit review findings in the following time frames:"

(A) Ninety percent or all but five cases of the cases selected in the active case sample each month, and ninety percent or all but five cases of the cases selected in the negative case sample each month, within 75 days after the end of the sample month;

(B) Ninety-five percent or all but five cases selected in the active and negative case samples within 95 days after the end of each sample month; and

(C) One hundred percent of the cases selected in the active and negative case samples within 120 days after the end of each sample month.

(iii) On a monthly basis, the edited review findings for the sample cases disposed of in the preceding month.

(iv) Original case record, i.e., the local agency record and the State QC file, legible copies of case records, or specified information contained in case records, by mail, within ten days of the State's receipt of a request for such information. The Department may grant exceptions to these requirements in limited cases.

(v) The following corrective action material:

(A) Corrective action plans for reducing case error rates for ineligibility, overpayments, underpayments, improper denials and terminations by February 15 of each year.

(B) A progress report on the status of implemented corrective actions, an evaluation of their effectiveness and any new initiatives based on current error rate data since the last annual corrective action plan by August 15 of each year.

(vi) Other data and reports that the Administrator requests.

(3) The State agency may submit an alternate completion plan for the Administrator's approval if the State is unable to meet the requirements of paragraph (b)(2)(ii) of this section either as a result of circumstances of a permanent or recurring nature or as a result of the occurrence of an unforeseen event during the sample period. Until the Administrator approves an alternate completion plan, the State must continue to comply with the requirements of paragraph (b)(2)(ii) of this section.

(i) Alternate sample case completion plan based on permanent or recurring events.

(A) The Administrator may approve an alternate completion plan where: The State's sample population is dispersed over such great distances that conducting the required number of field interviews needed to meet the requirements of paragraph (b)(2)(ii) of this section is cost prohibitive; or the State's usual weather conditions or geography make significant numbers of the sample population inaccessible or difficult to contact during certain times of the year making it a hardship for the State to comply with the requirements of paragraph (b)(2)(ii) of this section;

(B) The alternate completion plan request must contain supporting evidence and data which justify the need for an alternate completion plan including a description of the population dispersal or population inaccessibility problems within the State and the reason(s) why the State cannot comply with the requirements of paragraph (b)(2)(ii) of this section;

(C) The alternative completion plan request must contain details on the agency's proposed schedule for completing the sample cases including: The sample period(s) to be covered by the plan; the revised completion dates and completion percentages; and a revised schedule for the submission of the sample case edited review findings. The alternate completion plan request must be submitted no later than 60 days before the start of the first sample period covered by the plan; and

(D) Even if the alternate plan is approved, the agency must submit edited review findings on all cases selected in the sample period within 120 days after the end of each sample month in the period.

(ii) Temporary alternate completion plan based on unforseen events.

(A) The Administrator may approve an alternate completion plan for a particular sample period where unforseen events occur which temporarily prevent the State from meeting the requirements of paragraph (b)(2)(ii) of this section. These events can include, but are not limited to—floods, earthquakes, computer breakdowns, snowstorms, labor disputes, etc.

(B) The temporary alternate plan request must: Briefly describe the event(s) requiring the implementation of the temporary alternate plan; the period the revised schedule will be in effect; the revised completion dates; the revised completion percentages; and the revised schedule for submission of sample case edited review findings;

(C) A temporary alternate plan may allow the State agency to submit the edited review findings on its sample cases at later dates than specified in paragraph (b)(2)(ii) of this section.

(c) *Special provisions applicable to changes in circumstances.* (1) An overpayment, underpayment, or payment of ineligibiles that is related to a change in circumstances shall be counted as a case error if:

(i) The changes are incorrectly reflected in the review month payment; or

(ii) The change occurred in or before the second month prior to the review month and is not reflected in the review month payment.

(2) An overpayment, underpayment, or payment to ineligibles that is related to a change in circumstances shall not be counted as a case error if:

(i) The payment continues unadjusted because a hearing was requested; or

(ii) The change occurred in the review month or the month immediately preceding the review month.

(3) For purposes of this paragraph (c):

(i) A hearing decision is considered a change in circumstances;

(ii) The fact that the agency has complied with the requirements for redetermination of eligibility (see § 206.10(a)(9) of this chapter) or for timely action on information from the State's Income and Eligibility Verification System (IEVS) (see § 205.56(a)(1)) has no bearing on, and does not relieve the State agency of its responsibility for, the determination of erroneous payments or its liability for such payments; and

(iii) When the overpayment, underpayment, or payment to ineligibles is the result of several changes in circumstances, each change will be evaluated as to its impact on the final determination of case error.

[42 FR 37207, July 20, 1977, as amended at 43 FR 2631, Jan. 18, 1978; 47 FR 46510, Oct. 19, 1982; 47 FR 57942, Dec. 29, 1982; 48 FR 15629, Apr. 12, 1983; 49 FR 38285, Sept. 28, 1984; 51 FR 7214, Feb. 28, 1986; 51 FR 9203, Mar. 18, 1986; 53 FR 36579, Sept. 21, 1988]

§ 205.42 Reduction in Federal financial participation (FFP) for incorrect payments made by States from October 1980 through September 1984.

(a) *Purpose and applicability.* This section provides the rules we will use from October 1980 through September 1984, to determine whether we will reduce the amount of Federal matching funds (Federal financial participation or FFP) we give to a State, and, if so, the amount of the reduction. We will reduce the amount of our matching funds if a State makes more incorrect payments in its AFDC program than allowed under the rules in this section. These rules apply to all States which have AFDC programs.

(b) *Definitions.* For the purposes of this section:

"Annual assessment period" means the 12-month period October 1 through September 30.

"Base period" means the April through September 1978 quality control system review period.

"Incorrect payments" means payments to people who are ineligible for a payment and overpayments to eligible people.

"National standard" means a four percent payment error rate for the period October 1982 through September 1983 for all States; a four percent payment error rate for Guam, Puerto Rico and the Virgin Islands and a three percent payment error rate for the other States for the period October 1983 through September 1984.

"Payment error rate" means the dollar amount of incorrect payments a State has made expressed as a percentage of the State's total payments.

"We," "us" or "our" means the Department or the Family Support Administration as appropriate.

(c) *General.* In these rules we are establishing a national standard for incorrect payments in the AFDC programs. This standard will be used to measure performance of the States in each annual assessment period from October 1980 through September 1984. A State whose payment error rate is below the national standard in the base period must not go above the standard, without risking reduction in Federal matching funds. A State whose payment error rate is above the standard must reduce its error rate to the national standard or to the State's target error rate established under these rules.

(d) *How we establish acceptable levels for State performance using the national standard*—(1) *Target error rates for States above the national standard in the base period.* (i) Each State with a base period payment error rate in excess of 4 percent must reduce its payment error rate to 4 percent by the October 1982 through September 1983 annual assessment period in 3 equal increments for each October through September annual assessment period beginning with the October 1980 through September 1981 period. Each State other than Guam, Puerto Rico and the Virgin Islands must meet a three percent standard for the annual assessment period October 1983–September 1984.

(ii) We will establish each State's target error rate for the October 1980 through September 1981 annual assessment period by multiplying one-third times the amount by which the State's base period payment error rate exceeds 4 percent; this product is then subtracted from the State's base period payment error rate. To establish the target error rate for the October 1981 through September 1982 annual assessment period, we will multiply two-thirds times the amount by which the State's base period payment error rate exceeds 4 percent; this product is then subtracted from the State's base period payment error rate. For annual assessment periods after September 30, 1982, the State must meet the national standard.

EXAMPLE: The State's payment error rate during the base period is 10 percent. Therefore, the amount by which the State's payment error rate exceeds the 4 percent national standard is 6 percent (or 10 minus 4). The State must reduce this 6 percent by one-third, or 2 percent (8 percent target error rate) for the October 1980 through September 1981 annual assessment period. For the October 1981 through September 1982 annual assessment period, the State's target error rate would be 6 percent. For annual assessment periods after September 30, 1982, the State must meet the national standard.

(2) *States that have achieved the national standard.* States that achieved the four percent national standard in the base period must maintain that standard during the October 1980–September 1981 and the October 1981–September 1982 assessment periods and must meet the appropriate national standard thereafter.

(e) *Information we will use.* We will use the information provided by the

Federal/State quality control system. This system measures the dollar amount of incorrect payments for every 6-month period. (April through September and October through March). A State's payment error rate for the annual assessment period will be the sum of the weighted payment error rates in the State for the two corresponding 6-month sample periods. The weights will be established as a percentage of the total annual payments that occur in each of the 6-month periods. If a State fails to complete a valid and reliable sample for any 6-month sample period, we will assign to the State an error rate based on the weighted average of the State's payment error rate for the last three sample periods, a Federal sample, an audit, or a Federal subsample.

(f) *If a State fails to meet the established rate.* If a State does not meet the national standard or its target error rate for any 12 month annual assessment period, we will reduce our matching funds to the State to those 12 months, unless the State can show that it made a good faith effort to meet the target rate. We will reduce our matching funds by the amount we would not have paid if the State had reached its goal (the national standard or the target error rate). If a State uses the regular Federal percentage for FFP and has an average monthly payment per recipient of more than $32 in a 6-month sample period, an adjustment will be made to the State's error rate for purposes of determining the amount of reduction in our matching funds.

Example: The State's target payment error rate was 8 percent. During the first 6-month sample period the actual payment error rate was 10 percent and the total payments made during that 6-month period were $20 million. During the second 6-month sample period, the payment error rate was 9 percent and total payments were $30 million. The total payments in the annual assessment period were $50 million. The weight applied to the payment error rate for the first 6-month period would be 0.4 ($20 million divided by $50 million) and the weight applied to the payment error rate for the second 6-month period would be 0.6 ($30 million divided by $50 million). Therefore the payment error rate for the annual assessment period would be 9.4 percent or 4 percent (10% x 0.4 for the first 6 months) plus 5.4% (9% x 0.6 for the second 6 months). Since the target error rate was 8 percent and the payment error rate was 9.4 percent, we will reduce our matching funds by 1.4 percent of the Federal share of the dollars the State paid under its AFDC program.

(g) *When we will reduce a disallowance because a State has made a good faith effort.* (1) We will notify a State that we are going to reduce (or disallow) matching funds because the State did not meet the national standard or the target error rate established for the State. The State will have 65 days from the date on this notification to show that it made a good faith effort to meet the established error rate target. If we find that the State did not meet the national standard or the target error rate despite a good faith effort, we will reduce the funds being disallowed in whole or in part as we find appropriate under the circumstances shown by the State. A finding that a State did not meet the target error rate despite a good faith effort will be limited to extraordinary circumstances.

(2) Some examples of circumstances under which we may find that a State did not meet the target error rate despite a good faith effort are:

(i) Disasters such as fire, flood or civil disorders, that:

(A) Require the diversion of significant personnel normally assigned to AFDC eligibility administration, or

(B) Destroyed or delayed access to significant records needed to make or maintain accurate eligibility determinations;

(ii) Strikes of State staff or other government or private personnel necessary to the determination of eligibility or processing of case changes;

(iii) Sudden and unanticipated workload changes which result from changes in Federal law and regulations, or rapid, unpredictable caseload growth in excess of, for example, 15 percent for a 6-month period;

(iv) State actions resulting from incorrect written policy interpretation to the State by a Federal official reasonably assumed to be in a position to provide such interpretation; and

(v) The State timely developed and implemented a corrective action plan reasonably designed to meet the target error rate but the target error rate was not met. In evaluating whether the State has indeed made a good faith effort in these circumstances, we will consider the following factors:

(A) Demonstrated commitment by top management to the error reduction program e.g., priorities and goals clearly enunciated to staff, accountability for performance, availability of resources;

(B) Sufficiency and quality of systems designed to reduce errors that are operational in the State, e.g., BENDEX, IDEX, monthly reporting, retrospective budgeting, error prone profiles, local agency monitoring systems, computer clearances;

(C) Use of effective system and procedures for the statistical and program analysis of QC and related data, e.g., statistical tests, tabulations and cross-tabulations, error prone profiles, corrective action committees, special studies; and

(D) Effective management and execution of the correction action process, e.g., assignment of responsibilities, milestones for completing tasks, completion of tasks, monitoring of progress.

(3) The failure of a State to act upon necessary legislative changes or to obtain budget authorization for needed resources is not a basis for finding that a State failed to meet the target error rate despite a good faith effort.

(h) *Disallowances subject to appeal.* If a State does not agree with our decision to reduce (disallow) FFP, it can appeal to us within 45 days from the date of our decision. The regular procedures for appeal of disallowance will apply, including review by the Grant Appeals Board (see 45 CFR Part 16).

[45 FR 6333, Jan. 25, 1980; 49 FR 38286, Sept. 28, 1984; 50 FR 11698, Mar. 25, 1985, as amended at 53 FR 36580, Sept. 21, 1988]

§ 205.43 Increase in Federal financial participation (FFP) for States with low error rates.

(a) *Purpose.* (1) This section provides the rules we will use to determine whether we will increase the amount of Federal matching funds (Federal financial participation or FFP) we give to a State and, if so, the amount of the increase. Basically, we will increase the amount of matching funds to States with low error rates in their AFDC program as allowed under rules in this section. These rules apply to all States which have an AFDC program through March 31, 1983; however, these rules will only apply to the Commonwealth of Puerto Rico, the Virgin Islands, and Guam thereafter.

(2) We will use the data from the quality control system (see § 205.40) in each State and the Federal monitoring system in determining the amount of incorrect payments and payments that should have been made. The quality control (QC) system provides data on incorrect payments and nonpayments for every sample.

(b) *Definitions.* For purposes of this section:

"Assistance payment error rate" means the combined dollar amounts of a State's incorrect payments to ineligible families receiving assistance and overpayments and underpayments to eligible families receiving assistance, expressed as a percentage of the State's total payments.

"Dollar error rate" means the error rate obtained by combining the assistance payment error rate for ineligible, overpaid and underpaid cases with an estimated nonpayment error rate that results from incorrect terminations and denials.

"Erroneous excess payments" means the total of erroneous payments to ineligible families receiving assistance and overpayments to eligible families receiving assistance.

"Nonpayment error rate" means the estimated dollar amounts of a State's incorrect terminations and denials, expressed as a percentage of a State's total payments.

"Sample period" means the 6-month periods, October—March and April—September.

"Termination and denial error rate" means the number of a State's incorrect actions to terminate or deny assistance, expressed as a percentage of a State's total number of terminations and denials.

"We" means the Department or the Family Support Administration, as appropriate.

(c) *General.* In these rules we are establishing the basis under which States will receive increased FFP for dollar error rates below 4 percent. For each one-half percentage point below 4 percent, in which a State's dollar error rate falls, a State will receive an additional 10 percent of the Federal share of money saved, up to a maximum of 50 percent if the State's dollar error rate is below 2 percent. To figure the amount of increased FFP requires a two step computation. We first establish the dollar error rate. This rate determines a State's eligibility for increased FFP and, for eligible States, the percentage adjustment, between 10 and 50 percent, that will be applied in the 6-month period. The next step is to determine the State's erroneous excess payments and what those payments would have been at a rate of 4 percent. The percentage adjustment is applied to the difference. We describe this process in detail in the following paragraphs of this section.

(d) *How we establish a dollar error rate*—(1) *Information we will use.* We will use the information provided by the Federal/State quality control system. This system measures the dollar amount of incorrect payments and the number of incorrect terminations and denials.

(2) *How we use the information.* We will obtain a dollar error rate of incorrect payments and nonpayments in the following manner:

(i) We will figure the dollar amount of incorrect payments by multiplying the State assistance payment error rate for ineligibility, overpayments and underpayments by the total of State expenditures to AFDC families subject to sampling under the AFDC QC system in the sample period.

(ii) We will figure the dollar amount of incorrect nonpayments as follows:

(A) Obtain a total number of incorrect terminations and denials by multiplying the State's termination and denial error rate by the total number of terminations and denials subject to sampling under the AFDC QC system in the sample period; and

(B) Obtain a dollar amount for incorrect nonpayments by multiplying the total number of incorrect terminations and denials in step (A) by the average monthly cash payment made to AFDC QC sample cases in the sample period.

(iii) We will obtain the dollar error rate by dividing the sum of the dollar amounts of incorrect payments and nonpayments in steps (i) and (ii) by the total of State expenditures to AFDC families subject to sampling under the AFDC QC system in the sample period.

EXAMPLE: The total State payments made to AFDC families subject to sampling under the AFDC QC system in a sample period are $1,000,000. The assistance payment error rate for ineligibility (1 percent), overpayments (1.4 percent), and underpayments (0.1 percent) is 2.5 percent. This equates to incorrect payments of $25,000 (2.5 percent × $1,000,000). The termination and denial error rate is 0.5 percent. There were 4,000 terminations and denials subject to sampling in the sample period and the average monthly cash payment made to AFDC sample cases in the period was $250. Therefore, the estimated incorrect nonpayment dollar amount would be $5,000 (0.5 percent × 4,000 × $250). The dollar error rate is the sum of $25,000 and $5,000 divided by $1,000,000, or 3 percent.

(e) *How increased FFP will be determined*—(1) *What percentage adjustment is applied.* We will apply the following percentage adjustment:

If the dollar error rate is:

	Percentage adjustment applied
4 percent or greater	0
At least 3.5 percent but less than 4 percent	10
At least 3 percent but less than 3.5 percent	20
At least 2.5 percent but less than 3 percent	30
At least 2 percent but less than 2.5 percent	40
Less than 2 percent	50

(2) *How the percentage adjustment is applied.* States with a dollar error rate of less than 4 percent will receive increased FFP. The adjustment percentage provided in paragraph (e)(1) of this section will be applied to the difference between a State's erroneous excess payments and what those payments would have been at a rate of 4 percent.

EXAMPLE: Using the example in paragraph (d)(2) of this section, the amount of increased FFP would be determined as follows. The amount of erroneous excess payments is obtained by multiplying the combined payment error rate for ineligibility and overpayments (2.4 percent) by the total payments made to AFDC families ($1,000,000). This equates to $24,000. If the combined payment error rate for ineligibility and overpayments were 4 percent the erroneous excess payments would have been $40,000, or $16,000 more. Assuming the Federal share is 50 percent the Federal share of the $16,000 difference would be $8,000. Since the State has a 3 percent dollar error rate the percentage adjustment is 20 percent. The increase in FFP would therefore, by $8,000 × 20 percent, or $1,600.

[44 FR 67422, Nov. 26, 1979 as amended at 49 FR 38286, Sept. 28, 1984; 53 FR 36580, Sept. 21, 1988]

§ 205.44 Reduction in Federal financial participation (FFP) for incorrect payments made by States after September 1984.

(a) *Purpose and applicability.* This section provides the rules we will use beginning with October 1984 to determine whether we will reduce the amount of Federal matching funds (Federal financial participation or FFP) we give to a State, and, if so, the amount of the reduction. We will reduce the amount of our matching funds if a State makes more incorrect payments in its AFDC program than allowed under the rules in this section. These rules apply to all States which have AFDC programs.

(b) *Definitions.* For the purposes of this section—"Annual assessment period" means the 12-month period October 1–September 30.

"Incorrect assistance payments" means payments to people who are ineligible for a payment and overpayments to eligible people.

"National standard" means a four percent payment error rate for Guam, Puerto Rico and the Virgin Islands and a three percent payment error rate for all other States.

"Payment error rate" means the dollar amount of incorrect assistance payments a State has made expressed as a percentage of the State's total assistance payments.

"We," "us" or "our" mean the Department of Health and Human Services or the Family Support Administration.

(c) *General.* In these rules we are establishing national standards of four percent for Guam, Puerto Rico and the Virgin Islands and three percent for all other States for incorrect payments in the AFDC program. These standards will be used to measure performance of the states in each annual assessment period.

(d) *How we will measure a State's performance.* We will use the information provided by the Federal/State quality control system.

(1) This system measures the dollar amount of incorrect payments in each annual assessment period by reviewing a statistically valid sample of cases selected during each month of the assessment period. The sample results are then projected to the universe of all cases.

(2) If a State fails to complete a valid and reliable sample in accordance with the prescribed QC procedures and deadlines, which includes obtaining and using information available under § 205.55, as required by § 205.40, for any assessment period, we will notify the State of its failure and provide the State the opportunity to negotiate a solution regarding the timely completion of its sample. Where a State is unable to negotiate a solution or fails to carry out a negotiated solution we will assign to the State an error rate based on the best data reasonably available, including data obtained from any one or more of the following methods, error rate information for past sample periods, a partially completed State sample, a Federal subsample of completed State cases, a supplemental Federal sample, a Federal audit, and an audit conducted through a contractual agreement with a third party.

(e) *Cost of determining an error rate for States other than Guam, Puerto Rico and the Virgin Islands.* In any case where it is necessary for us to determine a State's error rate for a fiscal year because the State fails to cooperate with us by not providing the information required of the State in accordance with § 205.40 of these rules, the following procedure will apply. Pursuant to section 403(i)(3)(A) of the Act, notwithstanding any other provision of this chapter, total payments to a State under section 403(a)(3) for the proper and efficient administration of the State plan shall be reduced by the amount necessary (deducted without regard to any other reduction under this section) to offset all expenditures the Federal government has incurred in order to determine the State's error rate for any fiscal year in which that State has failed to provide the necessary error rate data. All amounts, both direct and indirect expenditures, shall be deducted generally no later than the second quarter following the quarter in which the costs of compiling data for determining the State's error rate are available.

(f) *If a State fails to meet the established error rate.* If a State does not meet the national standard for any assessment period, we will reduce our matching funds to the State for that period, unless a State can show that it made a good faith effort to meet the national standard. If a State uses the regular Federal percentage in section 403(a)(1) of the Act for FFP and has an average monthly payment per recipient of more than $ 32 in an assessment period, an adjustment will be made to the State's error rate for purposes of determining the amount of reduction in our matching funds.

EXAMPLE: In fiscal year 1985, the applicable national standard for a particular State is three percent. The State's payment error rate for the assessment period, October 1, 1984 through September 30, 1985, was 4.4 percent. Because the 4.4 percent error rate exceeds the national standard by 1.4 percentage points, we will reduce our Federal matching funds by 1.4 percent of the Federal share of the dollars the State paid to recipients in the form of assistance payments under its AFDC program during that year.

(g) *When we will reduce a disallowance because a State has made a good faith effort.* (1) A State will have 30 days after receipt of a notice of intent to disallow or 15 months after the end of each fiscal year, whichever comes first, to show that it made a good faith effort to meet the national standard. If we find that the State did not meet the national standard despite a good faith effort, we will reduce the funds being disallowed in whole or in part as we find appropriate under the circumstances shown by the State. A finding may be made that a State did not meet the national standard despite a good faith effort under certain limited circumstances. The burden of proof for showing that a good faith effort was made rests entirely with the State.

(2) Some examples of the limited circumstances under which we may find that a State did not meet the national standard despite a good faith effort are—

(i) Disasters such as fire, flood or civil disorders, that require the diversion of significant personnel normally assigned to AFDC eligibility administration, or destroyed or delayed access to significant records needed tomake or maintain accurate eligibility determinations.

(ii) Strikes of State staff or other government or private personnel necessary to the determination of eligibility or processing of case changes.

(iii) Sudden and unanticipated workload changes which result from changes in Federal law and regulations, or rapid, unpredictable caseload growth in excess of, for example, 15 percent for any consecutive six-month period in an assessment period;

(iv) The State has taken the action needed to meet the national standard, but the national standard was not met, and the State has demonstrated why these actions were not successful in meeting the standard. Request for a waiver under this criterion will not be considered unless a State has demonstrated some error reduction from the last assessment period or has achieved an error rate for the measurement period that does not exceed its target error rate by more than one-third despite an increase in error rate. If a State has met the error reduction requirement above, we will evaluate requests for a good faith waiver based on the following factors:

(A) Demonstrated committment by top management to the error reduction program, e.g., priorities and goals clearly enunciated to staff and acted upon, accountability for performance, acquisition of necessary resources, implementation of statutory and regulatory provisions intended to reduce errors, e.g., monthly reporting, retrospective budgeting, direct involvement of top management in activities related to error reduction;

(B) Sufficiency and quality of manual and automated systems and the effective use of such systems, designed to reduce errors, that are operational in the State, e.g., BENDEX, FAMIS, interjurisdictional matches, account number validation, computer matches, local agency case monitoring systems, supervisory reviews, verification procedures;

(C) Use of effective systems and procedures for the statistical and program analysis of QC and related data, e.g., statistical analyses by error element, tests of significance, augmented samples, tabulations and cross-tabulations, geographic breakdown of QC and related data, error prone profiles, special studies;

(D) Effective planning, management, execution and evaluation of the corrective action process, e.g., corrective action committees, assisgnment of responsibilities, milestones for completing tasks, monitoring of progress in completing tasks, completion of tasks, implementation of corrective actions; and

(E) Operation of a quality control system in accordance with federally prescribed policies, procedures, and time limits for sampling, conducting case reviews, and submitting QC data and reports.

(3) The failure of a State to act upon necessary legislative changes or to obtain budget authorization for needed resources is not a basis for finding that a State failed to meet the national standard despite a good faith effort.

(h) *Disallowances subject to appeal.* If a State does not agree with our decision to reduce (disallow) FFP, it can appeal to us within 30 days from the date of our notice. The regular procedures for appeal of a disallowance will apply, including review by the Commissioner and by the Grant Appeals Board (see 45 CFR Part 16). This appeal provision, as it applies to AFDC Quality Control disallowances, is not applicable to the Commissioner's decision on a State's "good faith" waiver request.

[49 FR 38286, Sept. 28, 1984; 50 FR 11698, Mar. 25, 1985, as amended at 51 FR 7214, Feb. 28, 1986; 53 FR 36580, Sept. 21, 1988]

§ 205.45 Federal financial participation in relation to State emergency welfare preparedness.

(a) Under title IV-A, Federal financial participation is available at the rate of 50 percent in expenditures for development and planning activities for emergency welfare preparedness. Such activities must relate to emergency welfare situations resulting from natural disasters, civil disorders, and enemy caused disasters, as prescribed in "Guidelines for the Preparation of State Emergency Welfare Services Plan" issued by Social and Rehabilitation Service, DHHS publication No. (SRS) 72-23004. These activities include:

(1) Safekeeping essential documents and records;

(2) Planning and developing emergency operating capability for providing food, lodging, clothing, and welfare registration and inquiry;

(3) Assuring that qualified individuals are responsible for the planning and operation of each welfare function essential under emergency conditions for care and services for public assistance recipients and potential recipients;

(4) Coordinating with other government and voluntary welfare agencies, and welfare-related business and professional organizations and associations, in developing emergency operating plans and attaining operational readiness;

(5) Preparing and maintaining data on kinds, numbers, and locations of essential welfare resources, including manpower;

(6) Developing ability to assess emergency welfare resources and determining requirements necessary to care for public assistance cases in the event of disaster or attack;

(7) Preparing plans for claiming and distributing the above resources;

(8) Developing mutual aid agreements at State and local levels with neighboring welfare organizations;

(9) Preparing and distributing written emergency operations plans for public assistance agencies and operating units;

(10) Participating in preparedness exercises for the purpose of testing

plans and determining the role of public assistance programs in relation to the overall preparedness program; and

(11) Travel incidental to any of the above activities.

(b) Federal financial participation is available at 50 percent under title IV-A for providing training in emergency welfare preparedness for all staff and for volunteers.

(c) In Guam, Puerto Rico, and the Virgin Islands, Federal financial participation is available at the rate of 75 percent in expenditures for emergency welfare preparedness under titles I, X, XIV, XVI (AABD) of the Social Security Act.

(d) The cost of these activities must be allocated to all programs benefited in accordance with Part 74, Subtitle A of Title 45 of the Code of Federal Regulations.

[41 FR 23387, June 10, 1976, as amended at 51 FR 9203, Mar. 18, 1986]

§ 205.50 Safeguarding information for the financial assistance programs.

(a) State plan requirements. A State plan for financial assistance under title IV-A of the Social Security Act, must provide that:

(1) Pursuant to State statute which imposes legal sanctions:

(i) The use or disclosure of information concerning applicants and recipients will be limited to purposes directly connected with:

(A) The administration of the plan of the State approved under title IV-A, the plan or program of the State under title IV-B, IV-C, IV-D, or IV-F or under title I, X, XIV, XVI (AABD), XIX or XX or the supplemental security income (SSI) program established by title XVI. Such purposes include establishing eligibility, determining amount of assistance, and providing services for applicants and recipients.

(B) Any investigation, prosecution, or criminal or civil proceeding conducted in connection with the administration of any such plans or programs.

(C) The administration of any other Federal or federally assisted program which provides assistance, in cash or in kind, or services, directly to individuals on the basis of need.

(D) The verification to the Employment Security Agency, or other certifying agency that an individual has been an AFDC recipient for at least 90 days or is a WIN or WIN Demonstration participant pursuant to Pub. L. 97-34, the Economic Recovery Tax Act of 1981.

(E) Any audit or similar activity, e.g., review of expenditure reports or financial review, conducted in connection with the administration of any such plan or program by any governmental entity which is authorized by law to conduct such audit or activity.

(F) The administration of a State unemployment compensation program.

(ii) The State agency has authority to implement and enforce the provisions for safeguarding information about applicants and recipients:

(iii) Disclosure of any information that identifies by name or address any applicant or recipient to any Federal, State, or local committee or legislative body other than in connection with any activity under paragraph (a)(1)(i)(E) of this section is prohibited.

(iv) Publication of lists or names of applicants and recipients will be prohibited. *Exception.* In respect to a State plan for financial assistance under title I, IVA, X, XIV, or XVI (AABD) of the Social Security Act, an exception to this restriction may be made by reason of the enactment or enforcement of State legislation, prescribing any conditions under which public access may be had to records of the disbursement of funds or payments under such titles within the State, if such legislation prohibits the use of any list or names obtained through such access to such records for commercial or political purposes.

(v) The State or local agency responsible for the administration of the State plan has authority to disclose the current address of a recipient to a State or local law enforcement officer at his or her request. Such information is disclosed only to law enforcement officers who provide the name and Social Security number of the recipient and satisfactorily demonstrate that:

(A) The recipient is a fugitive felon (as defined by the State);

(B) The location or apprehension of such felon is within the law officer's official duties; and

(C) The request is made in the proper exercise of those duties.

(2) The agency will have clearly defined criteria which govern the types of information that are safeguarded and the conditions under which such information may be released or used. Under this requirement:

(i) Types of information to be safeguarded include but are not limited to:

(A) The names and addresses of applicants and recipients and amounts of assistance provided (unless excepted under paragraph (a)(1)(iv) of this section);

(B) Information related to the social and economic conditions or circumstances of a particular individual including information obtained from any agency pursuant to § 205.55; information obtained from the Internal Revenue Service (IRS) and the Social Security Administration (SSA) must be safeguarded in accordance with procedures set forth by those agencies;

(C) Agency evaluation of information about a particular individual;

(D) Medical data, including diagnosis and past history of disease or disability, concerning a particular individual.

(ii) The release or use of information concerning individuals applying for or receiving financial assistance is restricted to persons or agency representatives who are subject to standards of confidentiality which are comparable to those of the agency administering the financial assistance programs.

(iii) Except in the case of information requested pursuant to §§ 205.55 and 205.56, or in the case of an emergency situation when the individual's prior consent for the release of information cannot be obtained, the family or individual is informed whenever possible of a request for information from an outside source, and permission is obtained to meet the request. In an emergency situation when the individual's consent for the release of information cannot be obtained, the individual will be notified immediately.

(iv) In the event of the issuance of a subpoena for the case record or for any agency representative to testify concerning an applicant or recipient, the court's attention is called, through proper channels to the statutory provisions and the policies or rules and regulations against disclosure of information.

(v) The same policies are applied to requests for information from a governmental authority, the courts, or a law enforcement official as from any other outside source.

(3)(i) The agency will publicize provisions governing the confidential nature of information about applicants and recipients, including the legal sanctions imposed for improper disclosure and use, and will make these provisions available to applicants and recipients and to other persons and agencies to whom information is disclosed.

(ii) All information obtained pursuant to the income and eligibility verification requirements at §§ 205.55 and 205.56 will be stored and processed so that no unauthorized personnel can acquire or retrieve the information by any means.

(iii) All persons with access to information obtained pursuant to the income and eligibility verification requirements under §§ 205.55 and 205.56 will be advised of the circumstances under which access is permitted and the sanctions imposed for illegal use or disclosure of the information.

(4) All materials sent or distributed to applicants, recipients, or medical vendors, including material enclosed in envelopes containing checks, will be limited to those which are directly related to the administration of the program and will not have political implications. Under this requirement:

(i) Specifically excluded from mailing or distribution are materials such as "holiday" greetings, general public announcements, voting information, alien registration notices;

(ii) Not prohibited from such mailing or distribution are materials in the immediate interest of the health and welfare of applicants and recipients, such as announcements of free medical examinations, availability of surplus food, and consumer protection information;

(iii) Only the names of persons directly connected with the administration of the program are contained in material sent or distributed to applicants, recipients, and vendors, and such persons are identified only in their official capacity with the State or local agency.

(b) [Reserved]

(c) *State plan requirements for programs of financial assistance in Puerto Rico, the Virgin Islands, and Guam.* A State plan under title I, X, XIV, or XVI (AABD) of the Social Security Act must meet all the requirements of paragraph (a) of this section, with the exception of paragraphs (a)(1)(i) (D) and (E), of this section, and also provide for disclosure of information concerning applicants and recipients for use by public officials who require such information in connection with their official duties. Under this requirement, such information shall be available only to public officials who certify in writing that:

(1) They are public officials as defined by State or Federal law of general applicability; and

(2) The information to be disclosed and used is required in connection with their official duties.

[45 FR 56684, Aug. 25, 1980, as amended at 47 FR 46506, Oct. 19, 1982; 49 FR 35599, Sept. 10, 1984; 51 FR 7214, Feb. 28, 1986; 51 FR 9203, Mar. 18, 1986; 54 FR 42243, Oct. 13, 1989; 54 FR 42243, Oct. 13, 1989]

§ 205.51 Income and eligibility verification requirements.

(a) A State plan under title I, IV-A, X, XIV or XVI (AABD) of the Social Security Act must provide that there be an Income and Eligibility Verification System in the State. Income and Eligibility Verification System (IEVS) means a system through which the State agency:

(1) Co-ordinates data exchanges with other Federally-assisted benefit programs covered by section 1137(b) of the Act;

(2) Requests and uses income and benefit information as specified in section 1137(a)(2) of the Act and §§ 205.55 and 205.56; and

(3) Adheres to standardized formats and procedures in exchanging information with the other programs and agencies and in providing such information as may be useful to assist Federal, State and local agencies in the administration of the child support program and the Social Security Administration in the administration of the title II and title XVI (SSI) programs. The State agency (UC) information from the State Wage Information Collection Agency, described in paragraph (b) of this section; from the agency administering the State's unemployment compensation program (UC) under section 3304 of the Internal Revenue Code; from agencies in other States cited in § 205.55(a)(5), as set forth by the Secretary; from SSA, as set forth by the Commissioner of Social Security; and from IRS, as set forth by the Commissioner of Internal Revenue.

(b) A State plan under title I, IV-A, X, XIV or XVI (AABD) of the Social Security Act must provide that, as part of its Income and Eligibility Verification System, there be a State Wage Information Collection Agency in the State. State Wage Information Collection Agency (SWICA) means the State agency receiving quarterly wage reports from employers in the State (which may be the agency administering the State's unemployment compensation program), or an alternative system which has been determined by the Secretary of Labor, in consultation with the Secretary of Agriculture and the Secretary of Health and Human Services, to be as effective and timely in providing employment related income and eligibility information.

(c) Wage information maintained by a SWICA which receives quarterly wage reports from employers but does not use these reports for computation of employment compensation shall:

(1) Contain the social security number, first and last name and middle initial, wages earned for the period of the report, and an identifier of the employer (such as name and address) for each employee;

(2) Include all employers covered by the State's UC law and require such employers to report wage information (as specified above) for each employee

within 30 days from the end of each calendar quarter;

(3) Accumulate earnings reported by employers for periods no longer than calendar quarters;

(4) Be machine readable; i.e., maintained in a fashion that permits automated processing; and

(5) Be available to other agencies in the State, to agencies in other States, and to Social Security Administration for establishing or verifying eligibility and benefit amounts under titles II and XVI of the Social Security Act, pursuant to agreements as required in § 205.58.

(d) A State shall obtain prior written approval from the Department, where appropriate, in accordance with 45 CFR 95.611, for any new developmental costs for automatic data processing equipment and services incurred in meeting IEVS requirements.

[51 FR 7214, Feb. 28, 1986]

§ 205.52 Furnishing of social security numbers.

The State plan under title I, IV-A, X, XIV, or CVI (AABD) of the Social Security Act must provide that:

(a) As a condition of eligibility, each applicant for or recipient of aid will be required:

(1) To furnish to the State or local agency a social security account number, hereinafter referred to as the SSN (or numbers, if more than one has been issued); and

(2) If he cannot furnish a SSN (either because such SSN has not been issued or is not known), to apply for such number through procedures adopted by the State or local agency with the Social Security Administration. If such procedures are not in effect, the applicant or recipient shall apply directly for such number, submit verification of such application, and provide the number upon its receipt.

(b) The State or local agency will assist the applicant or recipient in making applications for SSNs and will comply with the procedures and requirements established by the Social Security Administration for application, issuance, and verification of social security account numbers.

(c) The State or local agency will not deny, delay, or discontinue assistance pending the issuance or verfication of such numbers if the applicant or recipient has complied with the requirements of paragraph (a) of this section.

(d) The State or local agency will use such account numbers, in addition to any other means of identification it may determine to employ, in the administration of the plan.

(e) "Applicant" and "recipient" include for the purposes of this section the individuals seeking or receiving assistance and any other individual whose needs are considered in determining the amount of assistance.

(f) The State or local agency shall notify the applicant or recipient that the furnishing of the SSN is a condition of eligibility for assistance required by section 1137 of the Social Security Act and that the SSN will be utilized in the administration of the program.

(g) The State agency will submit all unverified social security numbers to the Social Security Administration (SSA) for verification. The State agency may acept as verified a social security number provided directly to the State agency by SSA or by another Federal or federally-assisted benefit program which has received the number from SSA or has submitted it to SSA for verification.

[51 FR 7217, Feb. 28, 1986]

§ 205.55 Requirements for requesting and furnishing eligibility and income information.

A State plan under title I, IV-A, X, XIV, or XVI (AABD) of the Social Security Act must provide that:

(a) Except as provided in paragraph (b), the State agency will request through the IEVS:

(1) Wage information from the SWICA for all applicants at the first opportunity following receipt of the application and for all recipients on a quarterly basis.

(2) Unemployment compensation information from the agency administering the State's unemployment compensation program under section 3304 of the Internal Revenue Code of 1954 and section 303 of the Act as follows:

(i) For applicants at the first opportunity following receipt of the application and in each of the first three months in which the individual is receiving aid, unless the individual is found to be receiving unemployment compensation, in which case the information will be requested until benefits are exhausted; and

(ii) In each of the first three months following any recipient-reported loss of employment, unless the individual is found to be receiving unemployment compensation, in which case the information will be requested until the benefits are exhausted.

(3) All available information maintained by the Social Security Administration for all applicants at the first opportunity following receipt of the application in the manner set forth by the Commissioner of Social Security. The State agency will also request such information for all recipients as of the effective date of this provision for whom such information has not previously been requested.

(4) Unearned income information from the Internal Revenue Service available under section 6103 (l)(7)(B) of the Internal Revenue Code of 1954, for all applicants at the first opportunity following receipt of the application for all recipients on a yearly basis. The request shall be made at the time and in the manner set forth by the Commissioner of Internal Revenue.

(5) As necessary, any income or other information affecting eligibility available from agencies in the State or other States administering:

(i) An AFDC program (in another State) under title IV-A of the Social Security Act;

(ii) A Medicaid program under title XIX of the Social Security Act;

(iii) An unemployment compensation program (in another State) under section 3304 of the Internal Revenue Code of 1954;

(iv) A Food Stamp program under the Food Stamp Act of 1977, as amended;

(v) Any State program administered under plan approved under Title I, X, XIV, or XVI (AABD) of the Social Security Act; and

(vi) A SWICA (in another State).

(b)(1) With respect to individuals who cannot furnish an SSN at application, information specified in paragraph (a) will be requested at the first opportunity provided by each source after the State agency is provided with the SSN.

(2) For the purposes of this section, applicants and recipients shall also include any other individuals whose income or resources are considered in determining the amount of assistance, if the State agency has obtained the SSN of such individuals.

(c) The State agency must furnish, when requested, income, eligibility and benefit information to:

(1) Agencies in the State or other States administering the programs cited in paragraph (a)(5) of this section, in accordance with specific agreements as described in § 205.58;

(2) The agency in the State or other States administering a program under title IV-D of the Social Security Act; and

(3) The Social Security Administration for purposes of establishing or verifying eligibility or benefit amounts under title II and XVI (SSI) of the Social Security Act.

(d) The Secretary may, based upon application from a State, permit a State to obtain and use income and eligibility information from an alternate source or sources in order to meet any requirement of paragraph (a) of this section. The State agency must demonstrate to the Secretary that the alternate source or sources is as timely, complete and useful for verifying eligibility and benefit amounts. The Secretary will consult with the Secretary of Agriculture and the Secretary of Labor prior to approval of a request. The State must continue to meet the requirements of this section unless the Secretary has approved the request.

(e) The State agency must, upon request, reimburse another agency for reasonable costs incurred in furnishing income and eligibility information as prescribed in this section, including new developmental costs associated with furnishing such information, in accordance with specific agreements as described in § 205.58.

[51 FR 7215, Feb. 28, 1986]

§ 205.56 Requirements governing the use of income and eligibility information.

A State plan under title I, IV-A, X, XIV, or XVI (AABD) of the Social Security Act must provide that:

(a) The State agency will use the information obtained under § 205.55, in conjunction with other information, for:

(1) Determining individuals' eligibility for assistance under the State plan and determining the amount of assistance. States wishing to exclude categories of information items from follow-up must submit for the Secretary's approval a follow-up plan describing the categories of information items which it proposes to exclude. For each category, the State must provide a reasonable justification that follow-up is not cost-effective. A formal cost-benefit analysis is not required. A State may exclude information items from the following data sources without written justification if followed up previously from another source: Unemployment compensation information received from the Internal Revenue Service, and earnings information received from the Social Security Administration. Information items in these categories which are not duplicative, but provide new leads, may not be excluded without written justification. A State may submit a follow-up plan or alter its plan at any time by notifying the Secretary and submitting the necessary justification. The Secretary will approve or disapprove categories of information items to be excluded under the plan within 60 days of its submission. Those categories approved by the Secretary will constitute an approved State follow-up plan for IEVS. For those information items not excluded from follow-up,

(i) The State agency shall review and compare the information obtained from each data exchange against information contained in the case record to determine whether it affects the applicant's or the recipient's eligibility or the amount of assistance.

(ii) The State agency shall verify that the information is accurate and applicable to case circumstances either through the applicant or recipient or through a third party, if such verification is determined appropriate based on agency experience or is required under paragraph (b) of this section.

(iii) For applicants, if the information is received during the application period, the State agency shall use such information, to the extent possible, in making the eligibility determination.

(iv) For individuals who are recipients when the information is received or for whom a decision could not be made prior to authorization of benefits, the State agency shall within forty-five (45) days of its receipt, initiate a notice of case action or an entry in the case record that no case action is necessary, except that: Completion of action may be delayed beyond forty-five (45) days on no more than twenty (20) percent of the information items targeted for follow-up, if:

(A) The reason that the action cannot be completed within forty-five (45) days is the nonreceipt of requested third-party verification; and

(B) Action is completed promptly, when third party verification is received or at the next time eligibility is redetermined, whichever is earlier. If action is completed when eligibility is redetermined and third party verification has not been received, the State agency shall make its decision based on information provided by the recipient and any other information in its possession.

(v) The State agency shall use appropriate procedures to monitor the timeliness requirements specified in this subparagraph;

(2) Investigations to determine whether recipients received assistance under the State plan to which they were not entitled; and

(3) Criminal or civil prosecutions based on receipt of assistance under the State plan to which recipients were not entitled.

(b) With respect to the information received under § 205.55 from the Internal Revenue Service concerning unearned income of an applicant or recipient:

(1) The agency shall not terminate, deny, suspend, or reduce benefits to the individual based on the information until it has taken the appropriate steps to independently verify the information, relating to:

(i) The amount of the resource or income involved;

(ii) Whether the applicant or recipient actually has (or had) access to the resource or income for his or her own use; and

(iii) The period or periods when the individual actually had the resource or income.

(2) The agency must verify the information by either:

(i) Requesting the entity from which the individual received the unearned income to verify the fact and amount of the unearned income or the resource; or

(ii) Sending the applicant or recipient a letter informing the individual of the information received and asking him or her to respond within a specific period. The letter must clearly explain the information the agency has, its relevance to the individual's eligibility or benefit, and what action the agency will take in the event the individual fails to respond to the letter.

(c) If the agency intends to reduce, suspend, terminate or deny benefits as a result of the actions taken pursuant to this section, the agency must provide notice and the opportunity for a fair hearing in accordance with § 205.10(a).

[51 FR 7215, Feb. 28, 1986, as amended at 53 FR 52712, Dec. 29, 1988]

§ 205.57 Maintenance of a machine readable file; requests for income and eligibility information.

A State plan under title I, IV—A, X, XIV, or XVI (AABD) of the Social Security Act must provide that:

(a) The State agency will maintain a file which is machine readable, i.e., which is maintained in a fashion that permits automated processing, and which contains the first and last name and verified social security number of each person applying for or receiving assistance under the plan.

(b) The State agency will use this file to exchange data with other agencies pursuant to § 205.55.

[51 FR 7216, Feb. 28, 1986]

§ 205.58 Income and eligibility information; specific agreements required between the State agency and the agency supplying the information.

(a) A state plan under title I, IV, AV—A, X, XIV, or XVI, (AABD) of the Social Security Act must provide that, in carrying out the requirements of §§ 205.55 and 205.56, the State agency will enter into specific written agreements as described in paragraph (b) with those agencies providing income and eligibility information. The agreements will contain the procedures to be used in requesting and providing information.

(b) These agreements will include, but need not be limited to, the following:

(1) Purpose of the request;

(2) Identification of all agency officials, by position with authority to request information;

(3) Methods and timing of the requests for information, including the machine readable format to be used, the period of time needed to furnish the requested information and the basis for establishing this period. Agreements with the SWICA and the agency administering the Unemployment Compensation program in the State must provide that the State agency shall obtain information no less frequently than twice monthly;

(4) The type of information and reporting periods for which information will be provided;

(5) Safeguards limiting release or redisclosure as required by Federal or State law or regulation, including the requirements of § 205.50 and as may be required by guidelines issued by the Secretary; and

(6) Reimbursement, if any, for the costs of furnishing the information requested by the State agency, including new developmental costs associated with furnishing such information.

[51 FR 7216, Feb. 28, 1986]

§ 205.60 Reports and maintenance of records.

A State plan under title I, IV—A, X, XIV, or XVI (AABD) of the Social Security Act must provide that:

(a) The State agency will maintain or supervise the maintenance of records necessary for the proper and efficient operation of the plan, including records regarding applications, determination of eligibility, the provision of financial assistance, and the use of any information obtained under § 205.55, with respect to individual applications denied, recipients whose benefits have been terminated, recipients whose benefits have been modified, and the dollar value of these denials, terminations and modifications. Under this requirement, the agency will keep individual records which contain pertinent facts about each applicant and recipient. The records will include information concerning the date of application and the date and basis of its disposition; facts essential to the determination of initial and continuing eligibility (including the individual's social security number, need for, and provision of financial assistance); and the basis for discontinuing assistance.

(b) The agency shall report as the Secretary prescribes for the purpose of determining compliance with the requirements of §§ 205.55 and 205.56 and for evaluating the effectiveness of the Income and Eligibility Verification System.

[51 FR 7216, Feb. 28, 1986]

§ 205.62 Delay of effective date.

(a) If the agency submits, by May 29, 1986, a plan describing a good faith effort to come into compliance with the requirements of section 1137 of the Act and these implementing regulations, the Secretary may grant a delay in the effective date of any provision of §§ 205.55 through 205.60 and § 206.10 implementing section 1137(a) and (g) of the Act. This plan must include the following information for each provision: the provision, the proposed implementation date, a justification for the delay, and a plan for implementing the provision. The Secretary shall consult with the Secretary of Agriculture and the Secretary of Labor prior to approval of any plan describing a good faith effort and may not grant a delay of the effective date of any provision beyond September 30, 1986.

(b) The Secretary may not grant a delay of the effective date of section 1137(c) of the Act, which is implemented by § 205.56. (The provisions of these statutory and regulation sections require the agency to follow certain procedures before taking any adverse actions based on information from the Internal Revenue Service concerning unearned income.)

[51 FR 7216, Feb. 28, 1986]

§ 205.70 Availability of agency program manuals.

State plan requirements. A State plan for financial assistance under title I, IV-A, IV-B, X, XIV, or XVI (AABD) of the Social Security Act must provide that:

(a) Program manuals and other policy issuances which affect the public, including the State agency's rules and regulations governing eligibility, need and amount of assistance, and recipient rights and responsibilities will be maintained in the State office and in each local and district office for examination on regular workdays during regular office hours by individuals, upon request for review, study, or reproduction by the individual.

(b)(1) A current copy of such material will be made available without charge or at a charge related to the cost of reproduction for access by the public through custodians who (i) request the material for this purpose, (ii) are centrally located and publicly accessible to a substantial number of the recipient population they serve, and (iii) agree to accept responsibility for filing all amendments and changes forwarded by the agency.

(2) Under this requirement the material, if requested, must be made available without charge or at a charge related to the cost of reproduction to public or university libraries, the local or district offices of the Bureau of Indian Affairs, and welfare or legal services offices or organizations. The material may also be made available, with or without charge, to other groups and to individuals. Wide availability of agency policy materials is recommended.

(c) Upon request, the agency will reproduce without charge or at a charge related to the cost of reproduction the specific policy materials necessary for an applicant or recipient, or his representative, to determine whether a fair hearing should be requested or to prepare for a fair hearing; and will establish policies for reproducing policy materials without charge, or at a charge related to cost, for any individual who requests such material for other purposes.

[38 FR 26378, Sept. 20, 1973, as amended at 44 FR 17941, Mar. 23, 1979; 45 FR 56685, Aug. 25, 1980]

§ 205.80 Evaluation of the Work Incentive Demonstration Program.

(a) If a State plan for AFDC under title IV-A of the Social Security Act provides for single State agency operation of a Work Incentive Demonstration program under the provisions of section 445 of title IV of the Social Security Act, the State is required to report data which the Secretary determines to be necessary to carry out his responsibility to evaluate the demonstration program. The report shall include, but not be limited to, such data as:

(1) Number of registrants;

(2) Number of registrants who enter full-time employment;

(3) Number of registrants who entered employment who are still employed 30 days later;

(4) Number of registrants whose AFDC grants are reduced or terminated because of participation in a work incentive demonstration program; and

(5) Amount of reduction in AFDC grants due to participation in a work incentive demonstration program.

(b) Such data are to be reported at a schedule to be determined by the Secretary, but not more frequently than quarterly.

(c) The State agency shall cooperate with the Department in the required evaluation of the work incentive demonstration program.

[47 FR 5673, Feb. 5, 1982]

§ 205.100 Single State agency.

(a)(1) *State plan requirements.* A State plan for financial assistance under title I, IV-A, X, XIV, or XVI (AABD) of the Social Security Act must:

(i) Provide for the establishment or designation of a single State agency with authority to administer or supervise the administration of the plan.

(ii) Include a certification by the attorney general of the State identifying the single State agency and citing the legal authority under which such agency administers, or supervises the administration of, the plan on a statewide basis including the authority to make rules and regulations governing the administration of the plan by such agency or rules and regulations that are binding on the political subdivisions, if the plan is administered by them.

(b) *Conditions for implementing the requirements of paragraph (a) of this section.* (1) The State agency will not delegate to other than its own officials its authority for exercising administrative discretion in the administration or supervision of the plan including the issuance of policies, rules, and regulations on program matters.

(2) In the event that any rules and regulations or decisions of the single State agency are subject to review, clearance, or other action by other offices or agencies of the State government, the requisite authority of the single State agency will not be impaired.

(3) In the event that any services are performed for the single State agency by other State or local agencies or offices, such agencies and offices must not have authority to review, change, or disapprove any administrative decision of the single State agency, or otherwise substitute their judgment for that of the agency as to the application of policies, rules, and regulations promulgated by the State agency.

[45 FR 56685, Aug. 25, 1980]

§ 205.101 Organization for administration.

(a) A State plan for financial assistance under title I, IV-A, X, XIV, or XVI (AABD) of the Social Security Act shall include a description of the organization and functions of the single State agency and an organizational chart of the agency.

(b) Where applicable, a State plan for financial assistance under title I, IV-A, X, XIV, or XVI (AABD) of the act shall identify the organizational unit within the State agency which is responsible for operation of the plan and shall include a description of its organization and functions and an organizational chart of the unit.

[45 FR 56685, Aug. 25, 1980]

§ 205.120 Statewide operation.

(a) *State plan requirements.* A State plan for financial assistance under title I, IV-A, X, XIV, or XVI (AABD) of the Social Security Act must provide that:

(1) It shall be in operation, through a system of local offices, on a statewide basis in accordance with equitable standards for assistance and administration that are mandatory throughout the State;

(2) If administered by political subdivisions of the State, the plan will be mandatory on such political subdivisions;

(3) The State agency will assure that the plan is continuously in operation in all local offices or agencies through:

(i) Methods for informing staff of State policies, standards, procedures and instructions; and

(ii) Regular planned examination and evaluation of operations in local offices by regularly assigned State staff, including regular visits by such staff; and through reports, controls, or other necessary methods.

[39 FR 16971, May 10, 1974, as amended at 44 FR 17942, Mar. 23, 1979; 45 FR 56686, Aug. 25, 1980]

§ 205.130 State financial participation.

State plan requirements:

(a) A State plan for financial assistance under title I, IV-A, X, XIV, or XVI (AABD) of the Social Security Act must provide that:

(1) State (as distiguished from local) funds will be used in both assistance and administration; and

(2) State and Federal funds will be apportioned among the political subdivisions of the State on a basis consistent with equitable treatment of individuals in similar circumstances throughout the State.

(b) A State plan under title I, IV-A, X, XIV, or XVI (AABD) of the Act must provide further that State funds will be used to pay a substantial part of the total costs of the assistance programs.

[45 FR 56686, Aug. 25, 1980]

§ 205.146 Specific limitations on Federal financial participation under title IV-A.

(a) *Penalty for failure to certify WIN registrants.* Pursuant to section 403(c) of the act, notwithstanding any other provision of this chapter, the Federal share of assistance payments under title IV-A of the act, with respect to any State, for any fiscal year beginning on or after July 1, 1973, shall be reduced by 1 percentage point (calculated without regard to any other reduction under this section) for each percentage point by which the number of individuals certified to the manpower agency as ready for employment or training under the State's WIN program falls below 15 percent of the average number of individuals in the State who are required to be registered during such fiscal year. (See § 220.35(b)(5) of this chapter.)

(b) *Penalty for failure to offer and arrange for provision of family planning services under title IV-A of the Act.* Pursuant to section 403(f) of the act, notwithstanding any other provision of this chapter, total payments to a State under title IV-A of the Act, for any fiscal year beginning on or after July 1, 1973, shall be reduced by 1 percent (calculated without regard to any other reduction under this section) if such State:

(1) In the immediately preceding fiscal year failed to carry out the provisions of section 402(a)(15) of the act, which require the offering and arrangement for provision of family planning services, or

(2) In the immediately preceding fiscal year (but in the case of the fiscal year beginning July 1, 1972, considering only the third and fourth quarters thereof), failed to carry out the provisions of section 402(a)(15) of the act with respect to any individual who within 3 months had been an applicant for or a recipient of AFDC under the State's approved title IV-A plan.

This penalty will be applied in accordance with instructions to be issued by SRS.

(c) [Reserved]

(d) *Penalty for failure to have an effective child support enforcement program*— (1)*General.* Pursuant to section 403(h) of the Act, notwithstanding any other provision of this chapter, total payments to a State under title IV-A of the Act for any quarters in any fiscal year, shall be reduced if a State is found by the Secretary to have failed to have an effective child support enforcement program in substantial compliance with the requirements of section 402(a)(27), as implemented by Parts 302 and 305 of this title. The reduction for any quarter (calculated without regard to any other reduction under this section) shall be:

(i) Not less than one nor more than two percent of such payments for a period beginning in accordance with § 305.100 (c) or (d) of this title not to exceed the one-year period following the end of the suspension period specified in the notice required by § 305.99 of this title;

(ii) Not less than two nor more than three percent of such payments if the finding is the second consecutive finding made as a result of an audit for a period beginning as of the second one-year period following the suspension period specified in the notice required by § 305.99 of this title not to exceed one year; or

(iii) Not less than three nor more than five percent of such payments if the finding is the third or subsequent consecutive finding as a result of an audit for a period beginning as of the third one-year period following the suspension period specified in the notice required by § 305.99 of this title.

(2) *Application of penalty.* (i) The penalty will be imposed for any quarter beginning after September 30, 1983.

(ii) The penalty will be imposed on the basis of the results of the audit conducted pursuant to Part 305 of this title.

(3) *Notice, suspension, corrective action period.* Notice, suspension and corrective action provisions are set forth at 45 CFR 305.99.

(e) *Reconsideration of penalty imposition.* Whenever a penalty is imposed under the provisions of this section, the State shall be entitled to and upon request shall receive a reconsideration of the imposition of the penalty in accordance with section 1116(d) of the Social Security Act, and regulations issued thereunder.

[38 FR 26379, Sept. 20, 1973, as amended at 39 FR 28706, Aug. 2, 1974; 41 FR 55346, Dec. 20, 1976; 44 FR 29427, May 18, 1979; 50 FR 40139, Oct. 1, 1985; 51 FR 9203, Mar. 18, 1986]

§ 205.150 Cost allocation.

A State plan under Title I, IV-A, X, XIV, or XVI (AABD) of the Social Security Act must provide that the State agency will have an approved cost allocation plan on file with the Department in accordance with the requirements contained in Subpart E of 45 CFR Part 95. Subpart E also sets forth the effect on FFP if the requirements contained in that Subpart are not met.

[47 FR 17508, Apr. 23, 1982]

§ 205.160 Equipment—Federal financial participation.

Claims for Federal financial participation in the cost of equipment for the cash assistance programs under Titles I, IV-A, X, XIV, XVI [AABD] and for the separate administrative unit established under Section 402(a)(19)(G) of the Social Security Act are to be determined in accordance with Subpart G or 45 CFR Part 95. Requirements concerning the management and disposition of equipment under these Titles are also prescribed in Subpart G of 45 CFR Part 95.

[47 FR 41576, Sept. 21, 1982]

§ 205.170 State standards for office space, equipment, and facilities.

State plan requirements: A State plan for financial assistance under title I, IV-A, X, XIV, or XVI(AABD) of the Social Security Act must provide that:

(a) The State agency will establish and maintain standards for office space, equipment, and facilities that will adequately and effectively meet program and staff needs. Under this requirement, offices must be well marked and clearly identifiable in the community as a public service.

(b) The State agency will assure that the standards are continuously in effect in all State and local offices or agencies, including agency suboffices, and special centers through:

(1) Making information about the standards available to State and local staff and other appropriate persons;

(2) Regular planned evaluation of housing and facilities by regularly assigned staff through visits, reports, controls and other necessary methods;

(3) Methods for enforcement when necessary to secure compliance with State standards.

[36 FR 3862, Feb. 27, 1971, as amended at 45 FR 56686, Aug. 25, 1980]

§ 205.190 Standard-setting authority for institutions.

(a) *State plan requirements.* If a State plan for financial assistance under title I, X, XIV, or XVI(AABD) of the Social Security Act includes aid or assistance to individuals in institutions as defined in § 233.60(b) (1) and (2) of this chapter the plan must:

(1) Provide for the designation of a State authority or authorities which shall be responsible for establishing and maintaining standards for such institutions;

(2) Provide that the State agency will keep on file and make available to FSA, OFA upon request:

(i) A listing of the types or kinds of institutions in which an individual may receive financial assistance;

(ii) A record naming the State authority(ies) responsible for establishing and maintaining standards for such types of institutions;

(iii) The standards to be utilized by such State authority(ies) for approval or licensing of institutions including, to the extent applicable, standards related to the following factors:

(*a*) Health (dietary standards and accident prevention);

(*b*) Humane treatment;

(*c*) Sanitation;

(*d*) Types of construction;

(*e*) Physical facilities, including space and accommodations per person;

(*f*) Fire and safety,

(*g*) Staffing, in number and qualifications, related to the purposes and scope of services of the institution;

(*h*) Resident records;

(*i*) Admission procedures;

(*j*) Administrative and fiscal records;

(*k*) The control by the individual, or his guardian or protective payee, of the individual's personal affairs.

(3) Provide for cooperative arrangements with the standard-setting authority(ies) in the development of standards directed toward assuring adequate quality of care; in upgrading of institutional programs and practice; in actions necessary to close institutions that mistreat or are hazardous to the safety of the patients; and in planning so that institutions may be geographically located in accordance with need.

(b) *Federal financial participation.* (1) Federal financial participation is available in staff and related costs of the State or local agency that are necessary to discharge the responsibilities of the State agency under this section, including such costs for staff:

(i) Participating with other agencies and community groups in activities to set up the authority(ies) and to advise on the formulation of policy for the establishment and maintenance of standards;

(ii) On loan for a time limited period to work with the standard-setting authority(ies) in upgrading institutional care;

(iii) Engaged in the function of coordination in States where there is more than one authority; and

(iv) Engaged in adjusting complaints and making reports and recommendations to the standard-setting authority(ies) on conditions which appear to be in violation of such standards.

(2) Federal financial participation is not available in the costs incurred by the standard-setting authority(ies) in establishing and maintaining standards for institutions.

[36 FR 3862, Feb. 27, 1971, as amended at 45 FR 56686, Aug. 25, 1980; 53 FR 36580, Sept. 21, 1988]

PART 206—APPLICATION, DETERMINATION OF ELIGIBILITY AND FURNISHING ASSISTANCE—PUBLIC ASSISTANCE PROGRAMS

AUTHORITY: Secs. 402 and 1102, Social Security Act (42 U.S.C. 602 and 1302) and Pub. L. 97-248, 96 Stat. 324, and Pub. L. 99-603.

§ 206.10 Application, determination of eligibility and furnishing of assistance.

(a) *State plan requirements.* A State plan under title I, IV-A, X, XIV, or XVI(AABD), of that Social Security Act shall provide that:

(1) Each individual wishing to do so shall have the opportunity to apply for assistance under the plan without delay. Under this requirement:

(i) Each individual may apply under whichever of the State plan plans he chooses;

(ii) The agency shall require a written application, signed under a penalty of perjury, on a form prescribed by the State agency, from the applicant himself, or his authorized representative, or, where the applicant is incompetent or incapacitated, someone acting responsibly for him;

(iii) An applicant may be assisted, if he so desires, by an individual(s) of his choice (who need not be a lawyer) in the various aspects of the application process and the redetermination of eligibility and may be accompanied by such individual(s) in contacts with the agency and when so accompanied may also be represented by them.

(iv)—(v) [Reserved]

(vi) Every recipient in a State which provides a supplemental payment under § 233.27 of this chapter shall have an opportunity to request that payment without delay.

(vii) For AFDC only, in order for the family to be eligible, an application with respect to a dependent child must also include, if living in the same household and otherwise eligible for assistance:

(A) Any natural or adoptive parent, or stepparent (in the case of States with laws of general applicability); and

(B) Any blood-related or adoptive brother or sister; *Exception:* needs and income of disqualified alien siblings, pursuant to § 233.50(c), are not considered in determining the eligibility and payment of an otherwise eligible dependent child.

(2)(i) Applicants shall be informed about the eligibility requirements and their rights and obligations under the program. Under this requirement individuals are given information in written form, and orally as appropriate, about coverage, conditions of eligibility, scope of the program, and related services available, and the rights and responsibilities of applicants for and recipients of assistance. Specifically developed bulletins or pamphlets explaining the rules regarding eligibility and appeals in simple, understandable terms are publicized and available in quantity.

(ii) Procedures shall be adopted which are designed to assure that recipients make timely and accurate reports of any change in circumstances which may affect their eligibility or the amount of assistance.

(iii) All applicants for and recipients of assistance shall be notified in writing at the time of application and on redetermination that eligibility and income information will be regularly requested from agencies specified in § 205.55 and will be used to aid in determining their eligibility for assistance.

(3) A decision shall be made promptly on applications, pursuant to reasonable State-established time standards not in excess of:

(i) 45 days for OAA, AFDC, AB, AABD (for aged and blind); and

(ii) 60 days for APTD, AABD (for disabled). Under this requirement, the applicant is informed of the agency's time standard in acting on applications which covers the time from date of application under the State plan to the date that the assistance check, or notification of denial of assistance or change of award is mailed to the applicant or recipient. The State's time standards apply except in unusual circumstances (e.g., where the agency cannot reach a decision because of failure or delay on the part of the applicant or an examining physician, or because of some administrative or other emergency that could not be controlled by the agency), in which instances the case record shows the cause for the delay. The agency's standards of promptness for acting on applications or redetermining eligibility shall not be used as a waiting period before granting aid, or as a basis for denial of an application or for terminating assistance.

(4) Adequate notice shall be sent to applicants and recipients to indicate that assistance has been authorized (including the amount of financial assistance) or that it has been denied or terminated. Under this requirement, adequate notice means a written notice that contains a statement of the action taken, and the reasons for and specific regulations supporting such action, and an explanation of the individual's right to request a hearing.

(5)(i) Financial assistance and medical care and services included in the plan shall be furnished promptly to eligible individuals without any delay attributable to the agency's administrative process, and shall be continued regularly to all eligible individuals until they are found to be ineligible. Under this requirement there must be arrangements to assist applicants and recipients in obtaining medical care and services in emergency situations on a 24-hour basis, 7 days a week.

(ii) Assistance will not be denied, delayed, or discontinued pending receipt of income or other information requested under § 205.55, if other evidence establishes the individual's eligibility for assistance.

(6) Assistance shall begin as specified in the State plan, which:

(i) For financial assistance.

(A) Must be no later than:

(*1*) The date of authorization of payment, or

(*2*) Thirty days in OAA, AFDC, AB, and AABD (as to the aged and blind), and 60 days in APTD and AABD (as to the disabled), from the date of receipt of a signed and completed application form, whichever is earlier: *Provided*, That the individuals then met all the eligibility conditions, and

(B) For purposes of Federal financial participation in OAA, AB, APTD, and AABD, may be as early as the first of the month in which an application has been received and the individual meets all the eligibility conditions; and

(C) In AFDC, for purposes of Federal financial participation, may be as early as the date of application provided that the assistance unit meets all the eligibility conditions; and

(D) In AFDC, States that pay for the month of application must prorate the payment for that month by multiplying the amount payable if payment were made for the entire month including special needs in accordance with § 233.34 by the ratio of the days in the month including and following the date of application (or, at State option, the date of authorization of payment) to the total number of days in such month. The State plan may provide for using a standard 30-day month to determine the prorated amount.

(7) In cases of proposed action to terminate, discontinue, suspend or reduce assistance, the agency shall give timely and adequate notice. Such notice shall comply with the provisions of § 205.10 of this chapter.

(8) Each decision regarding eligibility or ineligibility will be supported by facts in the applicant's or recipient's case record. Under this requirement each application is disposed of by a finding of eligibility or ineligibility unless:

(i) The applicant voluntarily withdraws his application, and there is an entry in the case record that a notice has been sent to confirm the applicant's notification to the agency that he does not desire to pursue his application; or

(ii) There is an entry in the case record that the application has been disposed of because the applicant died or could not be located.

(9) Where an individual has been determined to be eligible, eligibility will be reconsidered or redetermined:

(i) When required on the basis of information the agency has obtained previously about anticipated changes in the individual's situation;

(ii) Promptly, after a report is obtained which indicates changes in the individual's circumstances that may affect the amount of assistance to which he is entitled or may make him ineligible; and

(iii) Periodically, within agency established time standards, but not less frequently than every 12 months in OAA, AB, APTD, and AABD, on eligibility factors subject to change. For recipients of AFDC, all factors of eligibility will be redetermined at least every 6 months except in the case of monthly reporting cases or cases covered by an approved error-prone profiling system as specified in paragraph (a)(9)(iv) of this section. Under the AFDC program, at least one face-to-face redetermination must be conducted in each case once in every 12 months.

(iv) In accordance with paragraph (a)(9)(iii) of this section, under an alternative redetermination plan based on error-prone profiling, which has been approved by the Secretary, and includes:

(A) A description of the statistical methodology used to develop the error-prone profile system upon which the redetermination schedule is based;

(B) The criteria to be used to vary the scope of review and to assign different types of cases; and

(C) A detailed outline of the evaluation system, including provisions for necessary changes in the error-prone output, such as types of cases, types of errors, frequencies of redeterminations and corrective action.

(10) Standards and methods for determination of eligibility shall be consistent with the objectives of the programs, and will respect the rights of individuals under the United States Constitution, the Social Security Act, title VI of the Civil Rights Act of 1964, and all other relevant provisions of Federal and State laws.

(11) [Reserved]

(12) The State agency shall establish and maintain methods by which it shall be kept currently informed about local agencies' adherence to the State plan provisions and to the State agency's procedural requirements for determining eligibility, and it shall take corrective action when necessary.

(b) *Definitions.* For purposes of this section:

(1) "Applicant" is a person who has, directly, or through his authorized representative, or where incompetent or incapacitated, through someone acting responsibly for him, made application for public assistance from the agency administering the program, and whose application has not been terminated.

(2) "Application" is the action by which an individual indicates in writing to the agency administering public assistance (on a form prescribed by the state agency) his desire to receive assistance. The relative with whom a child is living or will live ordinarily makes application for the child for AFDC. An application is distinguished from an inquiry, which is simply a request for information about eligibility requirements for public assistance. Such inquiry may be followed by an application.

(3) "Date of Application" is the date on which the action described in paragraph (b)(2) of this section occurs.

(4) "Redetermination" is a review of factors affecting AFDC eligibility and payment amount; e.g. continued absence, income (including child and spousal support), etc.

[48 FR 28407, June 21, 1983 as amended at 49 FR 35599, Sept. 10, 1984; 51 FR 7217, Feb. 28, 1986; 51 FR 9203, Mar. 18, 1986; 52 FR 48689, Dec. 24, 1987 (interim); 53 FR 30433, Aug. 12, 1988 (final)]

PART 211—CARE AND TREATMENT OF MENTALLY ILL NATIONALS OF THE UNITED STATES, RETURNED FROM FOREIGN COUNTRIES

Sec.

211.1 General definitions.
211.2 General.
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211.6 Reception; temporary care, treatment, and assistance.
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211.15 Nondiscrimination.

Authority: Secs. 1-11, 74 Stat. 308-310; 24 U.S.C. 321-329.

Source: 39 FR 26546, July 19, 1974, unless otherwise noted.

§ 211.1 General definitions.

When used in this part:

(a) "Act" means Pub. L. 86-571, approved July 5, 1960, 74 Stat. 308, entitled "An Act to provide for the hospitalization, at Saint Elizabeths Hospital in the District of Columbia or elsewhere, of certain nationals of the United States adjudged insane or otherwise found mentally ill in foreign countries, and for other purposes";

(b) The term "Secretary" means the Secretary of Health and Human Services;

(c) The term "Department" means the Department of Health and Human Services;

(d) The term "Administrator" means the Administrator, Family Support Administration, Department of Health and Human Services;

(e) The term "eligible person" means an individual with respect to whom the certificates referred to in § 211.3 are furnished to the Administrator in connection with the reception of an individual arriving from a foreign country;

(f) The term "Public Health Service" means the Public Health Service in the Department of Health and Human Services;

(g) The term "agency" means an appropriate State or local public or nonprofit agency with which the Administrator has entered into arrangements for the provision of care, treatment, and assistance pursuant to the Act;

(h) The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam;

(i) The term "residence" means residence as determined under the applicable law or regulations of a State or political subdivision for the purpose of determining the eligibility of an individual for hospitalization in a public mental hospital;

(j) The term "legal guardian" means a guardian, appointed by a court, whose powers, duties, and responsibilities include the powers, duties, and responsibilities of guardianship of the person.

[39 FR 26546, July 19, 1974, as amended at 53 FR 36580, Sept. 21, 1988]

§ 211.2 General.

The Administrator shall make suitable arrangements with agencies to the end that any eligible person will be received, upon request of the Secretary of State, at the port of entry or debarkation upon arrival in the United States from a foreign country and be provided, to the extent necessary, with temporary care, treatment, and assistance, pending transfer and release or hospitalization pursuant to the Act. The Administrator shall also make suitable arrangements with appropriate divisions of the Public Health Service, with Saint Elizabeths Hospital in the District of Columbia, with Federal hospitals outside of the Department, or with other public or private hospitals to provide the eligible person with care and treatment in a hospital. The Administrator shall maintain a roster setting forth the name and address of each eligible person currently receiving care and treatment, or assistance, pursuant to the Act.

§ 211.3 Certificates.

The following certificates are necessary to establish that an individual is an eligible person:

(a) *Certificates as to nationality.* A certificate issued by an authorized official of the Department of State, stating that the individual is a national of the United States.

(b) *Certificate as to mental condition.* Either (1) a certificate obtained or transmitted by an authorized official of the Department of State that the individual has been legally adjudged insane in a named foreign country; or (2) a certificate of an appropriate authority or person stating that at the time of such certification the individual was in a named foreign country and was in need of care and treatment in a mental hospital. A statement shall, if possible, be incorporated into or attached to the certificate furnished under this paragraph setting forth all available medical and other pertinent information concerning the individual.

(c) *Appropriate authority or person.* For the purpose of paragraph (b)(2) of this section a medical officer of the Public Health Service or of another agency of the United States, or a medical practitioner legally authorized to provide care or treatment of mentally ill persons in the foreign country, is an "appropriate authority or person," and shall be so identified in his execution of the certificate. If such a medical officer or practitioner is unavailable, an authorized official of the Department of State may serve as an "appropriate authority or person," and shall, in the execution of the certificate, identity himself as serving as such person due to the unavailability of a suitable medical officer or practitioner.

§ 211.4 Notification to legal guardian, spouse, next of kin, or interested persons.

(a) Whenever an eligible person arrives in the United States from a foreign country, or when such person is transferred from one State to another, the Administrator shall, upon such arrival or transfer (or in advance thereof, if possible), provide for notification of his legal guardian, or in the absence of such a guardian, of his spouse or next of kin, or in the absence of any of these, of one or more interested persons, if known.

(b) Whenever an eligible person is admitted to a hospital pursuant to the Act, the Administrator shall provide for immediate notification of his legal guardian, spouse, or next of kin, if known.

§ 211.5 Action under State law; appointment of guardian.

Whenever an eligible person is incapable of giving his consent to care and treatment in a hospital, either because of his mental condition or because he is a minor, the agency will take appropriate action under State law, including, if necessary, procuring the appointment of a legal guardian, to ensure the proper planning for and provision of such care and treatment.

§ 211.6 Reception; temporary care, treatment, and assistance.

(a) *Reception.* The agency will meet the eligible person at the port of entry or debarkation, will arrange for appropriate medical examination, and will plan with him, in cooperation with his legal guardian, or, in the absence of such a guardian, with other interested persons, if any, for needed temporary care and treatment.

(b) *Temporary care, treatment, and assistance.* The agency will provide for temporary care, treatment, and assistance, as reasonably required for the health and welfare of the eligible person. Such care, treatment, and assistance may be provided in the form of hospitalization and other medical and remedial care (including services of necessary attendants), food and lodging, money, payments, transportation, or other goods and services. The agency will utilize the Public Health Service General Hospital nearest to the port of entry or debarkation or any other suitable public or private hospital, in providing hospitalization and medical care, including diagnostic service as needed, pending other appropriate arrangements for serving the eligible person.

§ 211.7 Transfer and release of eligible person.

(a) *Transfer and release to relative.* If at the time of arrival from a foreign country or any time during temporary or continuing care and treatment the Administrator finds that the best interests of the eligible person will be served thereby, and a relative, having been fully informed of his condition, agrees in writing to assume responsibility for his care and treatment, the Administrator shall transfer and release him to such relative. In determining whether his best interest will be served by such transfer and release, due weight shall be given to the relationship of the individuals involved, the financial ability of the relative to provide for such person, and the accessibility to necessary medical facilities.

(b) *Transfer and release to appropriate State authorities, or agency of the United States.* If appropriate arrangements cannot be accomplished under paragraph (a) of this section, and if no other agency of the United States is responsible for the care and treatment of the eligible person, the Administrator shall endeavor to arrange with the appropriate State mental health authorities of the eligible person's State of residence or legal domicile, if any, for the assumption of responsibility for the care and treatment of the eligible person by such authorities and shall, upon the making of such arrangements in writing, transfer and release him to such authorities. If any other agency of the United States is responsible for the care and treatment of the eligible person, the Administrator shall make arrangements for his transfer and release to that agency.

§ 211.8 Continuing hospitalization.

(a) *Authorization and arrangements.* In the event that appropriate arrangements for an eligible person in need of continuing care and treatment in a hospital cannot be accomplished under § 211.7, or until such arrangements can be made, care and treatment shall be provided by the Administrator in Saint Elizabeths Hospital in the District of Columbia, in an appropriate Public Health Service Hospital, or in such other suitable public or private hospital as the Administrator determines is in the best interests of such person.

(b) *Transfer to other hospital.* At any time during continuing hospitalization, when the Administrator deems it to be in the interest of the eligible person or of the hospital affected, the Administrator shall authorize the transfer of such person from one hospital to another and, where necessary to that end, the Administrator shall authorize the initiation of judicial proceedings for the purpose of obtaining a commitment of such person to the Secretary.

(c) *Place of hospitalization.* In determining the placement or transfer of an eligible person for purposes of hospitalization, due weight shall be given to such factors as the location of the eligible person's legal guardian or family, the character of his illness and the probable duration thereof, and the facilities of the hospital to provide care and treatment for the particular health needs of such person.

§ 211.9 Examination and reexamination.

Following admission of an eligible person to a hospital for temporary or continuing care and treatment, he shall be examined by qualified members of the medical staff as soon as practicable, but not later than the fifth day after his admission. Each such person shall be reexamined at least once within each six month period beginning with the month following the month in which he was first examined.

§ 211.10 Termination of hospitalization.

(a) *Discharge or conditional release.* If, following an examination, the head of the hospital finds that the eligible person hospitalized for mental illness (whether or not pursuant to a judicial commitment) is not in need of such hospitalization, he shall be discharged. In the case where hospitalization was pursuant to a judicial commitment, the head of the hospital may, in accordance with laws governing hospitalization for mental illness as may be in force and generally applicable in the State in which the hospital is located, conditionally release him if he finds that this is in his best interests.

(b) *Notification to committing court.* In the case of any person hospitalized under § 211.8 who has been judicially committed to the custody of the Secretary, the Secretary will notify the committing court in writing of the discharge or conditional release of such person under this section or of his transfer and release under § 211.7.

§ 211.11 Request for release from hospitalization.

If an eligible person who is hospitalized pursuant to the Act, or his legal guardian, spouse, or adult next of kin, requests his release, such request shall be granted by the Administrator if his best interests will be served thereby, or by the head of the hospital if he is found not to be in need of hospitalization by reason of mental illness. The right of the administrator or the head of the hospital, to refuse such request and to detain him for care and treatment shall be determined in accordance with laws governing the detention, for care and treatment, of persons alleged to be mentally ill as may be in force and applicable generally in the State in which such hospital is located, but in no event shall the patient be detained more than forty-eight hours (excluding any period of time falling on a Sunday or a legal holiday observed by the courts of the State in which such hospital is located) after the receipt of such request unless within such time (a) judicial proceedings for such hospitalization are commenced or (b) a judicial extension of such time is obtained, for a period of not more than five days, for the commencement of such proceedings.

§ 211.12 Federal payments.

The arrangements made by the Administrator with an agency or hospital for carrying out the purposes of the Act shall provide for payments to such agency or hospital, either in advance or by way of reimbursement, of the costs of reception, temporary care, treatment, and assistance, continuing care and treatment, and transportation, pursuant to the Act, and payments for other expenditures necessarily and reasonably related to providing the same. Such arrangements shall include the methods and procedures for determining the amounts of the advances or reimbursements, and for remittance and adjustment thereof.

§ 211.13 Financial responsibility of the eligible person; collections, compromise, or waiver of payment.

(a) *For temporary care and treatment.* If an eligible person receiving temporary care, treatment, and assistance, pursuant to the Act, has financial resources available to pay all or part of the costs of such care, the Administrator shall require him to pay for such costs, either in advance or by way of reimbursement, unless in his judgment it would be inequitable or impracticable to require such payment.

(b) *For continuing care and treatment.* Any eligible person receiving continuing care and treatment in a hospital, or his estate, shall be liable to pay or contribute toward the payment of the costs or charges therefor, to the same extent as such person would, if a resident of the District of Columbia, be liable to pay, under the laws of the District of Columbia, for his care and maintenance in a hospital for the mentally ill in that jurisdiction.

(c) *Collections, compromise, or waiver of payment.* The Administrator may, in his discretion, where in his judgment substantial justice will be best served thereby or the probable recovery will not warrant the expense of collection, compromise, or waive the whole or any portion of, any claim for continuing care and treatment, and assistance, and in the process of arriving at such decision, the Administrator may make or cause to be made such investigations as may be necessary to determine the ability of the patient to pay or contribute toward the cost of his continuing care and treatment in a hospital.

§ 211.14 Disclosure of information.

(a) No disclosure of any information of a personal and private nature with respect to an individual obtained at any time by any person, organization, or institution in the course of discharging the duties of the Secretary under the Act shall be made except insofar:

(1) As the individual or his legal guardian, if any (or, if he is a minor, his parent or legal guardian), shall consent;

(2) As disclosure may be necessary to carry out any functions of the Secretary under the Act;

(3) As disclosure may be directed by the order of a court of competent jurisdiction;

(4) As disclosure may be necessary to carry out any functions of any agency of the United States which are related to the return of the individual from a foreign country, or his entry into the United States; or

(5) As expressly authorized by the Administrator.

(b) An agreement made with an agency or hospital for care, treatment, and assistance pursuant to the Act shall provide that no disclosure will be made of any information of a personal and private nature received by such agency or hospital in the course of discharging the duties under such agreement except as is provided therein, or is otherwise specifically authorized by the Administrator.

(c) Nothing in this section shall preclude disclosure, upon proper inquiry, of information as to the presence of an eligible person in a hospital, or as to his general condition and progress.

§ 211.15 Nondiscrimination.

(a) No eligible person shall, on the ground of race, color, or national origin, be excluded from participation, be denied any benefits, or otherwise be subjected to discrimination of any nature or form in the provision of any benefits, under the Act.

(b) The prohibition in paragraph (a) of this section precludes discrimination either in the selection of individuals to receive the benefits, in the scope of benefits, or in the manner of providing them. It extends to all facilities and services provided by the Administrator or an agency to an individual, and to the arrangements and the procedures under this part relating thereto, in connection with reception, temporary care, treatment, and assistance, and continuing hospitalization under the Act.

PART 212—ASSISTANCE FOR UNITED STATES CITIZENS RETURNED FROM FOREIGN COUNTRIES

Sec.

212.1 General definitions.
212.2 General.
212.3 Eligible person.
212.4 Reception; initial determination, provisions of temporary assistance.
212.5 Periodic review and redetermination; termination of temporary assistance.
212.6 Duty to report.
212.7 Repayment to the United States.
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212.9 Disclosure of information.
212.10 Nondiscrimination.

AUTHORITY: Sec. 302, 75 Stat. 142, sec. 1102, 49 Stat. 647; 42 U.S.C. 1313, 1302.

SOURCE: 39 FR 26548, July 19, 1974, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to this part appear at 53 FR 36580, Sept. 21, 1988.

§ 212.1 General definitions.

When used in this part:

(a) "Act" means section 1113 of the Social Security Act, as amended;

(b) The term "Secretary" means the Secretary of Health and Human Services;

(c) The term "Department" means the Department of Health and Human Services;

(d) The term "Administration" means the Family Support Administration, Department of Health and Human Services;

(e) The term "Administrator" means the Administrator, Family Support Administration;

(f) The term "eligible person" means an individual with respect to whom the conditions in § 212.3 are met;

(g) The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam;

(h) The term "United States" when used in a geographical sense means the States;

(i) The term "agency" means State or local public agency or organization or national or local private agency or organization with which the Administrator has entered into agreement for the provision of temporary assistance pursuant to the Act;

(j) The term "temporary assistance" means money payments, medical care, temporary billeting, transportation, and other goods and services necessary for the health, or welfare of individuals, including guidance, counseling, and other welfare services.

[39 FR 26548, July 19, 1974, as amended at 53 FR 36580, Sept. 21, 1988]

§ 212.2 General.

The Administrator shall develop plans and make arrangements for provision of temporary assistance within the United States to any eligible person, after consultation with appropriate offices of the Department of State, the Department of Justice, and the Department of Defense. Temporary assistance shall be provided, to the extent feasible, in accordance with such plans, as modified from time to time by the Administrator. The Administrator shall enter into agreements with agencies whose services and facilities are to be utilized for the purpose of providing temporary assistance pursuant to the Act, specifying the conditions governing the provision of such assistance and the manner of payment of the cost of providing therefor.

§ 212.3 Eligible person.

In order to establish that an individual is an eligible person, it must be found that:

(a) He is a citizen of the United States or a dependent of a citizen of the United States;

(b) A written statement has been transmitted to the Service by an authorized official of the Department of State containing information which identifies him as having returned, or been brought, from a foreign country to the United States because of the destitution of the citizen of the United States, or the illness of such citizen or any of his dependents, or because of war, threat of war, invasion, or similar crisis. Such statement shall, if possible, incorporate or have attached thereto, all available pertinent information concerning the individual. In case of war, threat of war, invasion, or similar crisis, a determination by the Department of State that such a condition is the general cause for the return of citizens of the United States and their dependents from a particular foreign country, and evidence that an individual has returned, or, been brought, from such country to the United States shall be considered sufficient identification of the reason for his return to, or entry into the United States; and

(c) He is without resources immediately accessible to meet his needs.

§ 212.4 Reception; initial determination, provisions of temporary assistance.

(a) The Administration, or the agency upon notification by the Administration, will meet individuals, identified as provided in § 212.3(b), at the port of entry or debarkation.

(b) The Administration or agency will make findings, setting forth the pertinent facts and conclusions, and an initial determination, according to standards established by the Administration, as to whether an individual is an eligible person.

(c) The Administration or agency will provide temporary assistance within the United States to an eligible person, according to standards of need established by the Administration, upon arrival at the port of entry or debarkation, during transportation to his intermediate and ultimate destinations, and after arrival at such destinations.

(d) Temporary assistance may be furnished only for 90 days from the day of arrival of the eligible person in the United States unless he is handicapped in attaining self-support or self-care for such reasons as age, disability, or lack of vocational preparation. In such cases temporary assistance may be extended upon prior authorization by the Administration for nine additional months.

[39 FR 26548, July 19, 1974, as amended at 40 FR 43218, Sept. 19, 1975; 53 FR 36580, Sept. 21, 1988]

§ 212.5 Periodic review and redetermination; termination of temporary assistance.

(a) The Administration or agency will review the situation of each recipient of temporary assistance at frequent intervals to consider whether or not circumstances have changed that would require a different plan for him.

(b) Upon a finding by the Administration or agency that a recipient of temporary assistance has sufficient resources available to meet his needs, temporary assistance shall be terminated.

[39 FR 26548, July 19, 1974, as amended at 53 FR 36580, Sept. 21, 1988]

§ 212.6 Duty to report.

The eligible person who receives temporary assistance, or the person who is caring for or otherwise acting on behalf of such eligible person, shall report promptly to the Administration or agency any event or circumstance which would cause such assistance to be changed in amount or terminated.

[39 FR 26548, July 19, 1974, as amended at 53 FR 36580, Sept. 21, 1988]

§ 212.7 Repayment to the United States.

(a) An individual who has received temporary assistance shall be required to repay, in accordance with his ability, any or all of the cost of such assistance to the United States, except insofar as it is determined that:

(1) The cost is not readily allocable to such individual;

(2) The probable recovery would be uneconomical or otherwise impractical;

(3) He does not have, and is not expected within a reasonable time to have, income and financial resources sufficient for more than ordinary needs; or

(4) Recovery would be against equity and good conscience.

(b) In determining an individual's resources, any claim which he has against any individual, trust or estate, partnership, corporation, or government shall be considered, and assignment to the United States of such claims shall be taken in appropriate cases.

(c) A determination that an individual is not required to repay the cost of temporary assistance shall be final and binding, unless such determination was procured by fraud or misrepresentation of the individual or some other person, or the individual voluntarily offers to repay.

(d) A determination that an individual is required to repay any or all of the cost of temporary assistance may be reconsidered at any time prior to repayment of the required amount. A further determination shall be made with respect to his liability to repay the balance of such amount on the basis of new evidence as to whether (1) he has, or is expected within a reasonable time to have, income and financial resources sufficient for more than ordinary needs, or (2) recovery would be against equity and good conscience.

§ 212.8 Federal payments.

The agreement made by the Administrator with an agency for carrying out the purposes of the Act shall provide for payment to such agency, either in advance or by way of reimbursement, of the cost of temporary assistance provided pursuant to the Act, and payment of the cost of other expenditures necessarily and reasonably related to providing the same. Such agreement shall include the cost of other expenditures necessarily and reasonably related to providing the same. Such agreement shall include the method for determining such costs, as well as the methods and procedures for determining the amounts of advances or reimbursement and for remittance and adjustment thereof.

§ 212.9 Disclosure of information.

(a) No disclosures of any information of a personal and private nature with respect to an individual obtained at any time by any person, organization, or institution in the course of discharging the duties of the Secretary under the Act shall be made except insofar:

(1) As the individual or his legal guardian, if any (or, if he is a minor, his parent or legal guardian), shall consent;

(2) As disclosure may be necessary to carry out any functions of the Secretary under the Act;

(3) As disclosure may be necessary to carry out any functions of any agency of the United States which are related to the return of the individual from a foreign country, or his entry into the United States; or

(4) As expressly authorized by the Administrator.

(b) An agreement made with an agency for the provision of temporary assistance pursuant to the Act shall provide that no disclosure will be made of any information of a personal and private nature received by such agency in the course of discharging the duties under such agreement except as is provided therein, or is otherwise specifically authorized by the Administrator.

§ 212.10 Nondiscrimination.

(a) No eligible person shall, on the ground of race, color, or national origin be excluded from participation, be denied any benefits, or otherwise be subjected to discrimination of any nature or form in the provision of any benefits under the Act.

(b) The prohibition in paragraph (a) of this section precludes discrimination either in the selection of individuals to receive the benefits, in the scope of benefits, or in the manner of providing them. It extends to all facilities and services provided by the Service or an agency to an individual, and to the arrangements and the procedures under this part relating thereto, in connection with reception and temporary assistance under the Act.

PART 213—PRACTICE AND PROCEDURE FOR HEARINGS TO STATES ON CONFORMITY OF PUBLIC ASSISTANCE PLANS TO FEDERAL REQUIREMENTS

Subpart A—General

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213.31 Posthearing briefs.
213.32 Decisions following hearing.
213.33 Effective date of Administrator's decision.

AUTHORITY: Sec. 1102, 49 Stat. 647; 42 U.S.C. 1302.

SOURCE: 36 FR 1454, Jan. 29, 1971, unless otherwise noted.

Subpart A—General

§ 213.1 Scope of rules.

(a) The rules of procedure in this part govern the practice for hearings afforded by the Department to States pursuant to § 201.4 or § 201.6 (a) or (b) of this chapter, and the practice relating to decisions upon such hearings. These rules may also be applied to hearings afforded by the Department to States in other Federal-State programs for which Federal administrative responsibility has been delegated to the Service.

(b) Nothing in this part is intended to preclude or limit negotiations between the Department and the State, whether before, during, or after the hearing to resolve the issues which are, or otherwise would be, considered at the hearing. Such negotiations and resolution of issues are not part of the hearing, and are not governed by the rules in this part, except as expressly provided herein.

§ 213.2 Records to be public.

All pleadings, correspondence, exhibits, transcripts of testimony, exceptions, briefs, decisions, and other documents filed in the docket in any proceeding may be inspected and copied in the office of the FSA Hearing Clerk. Inquiries may be made at the Central Information Center, Department of Health and Human Services, 330 Independence Avenue SW., Washington, DC 20201.

[36 FR 1454, Jan. 29, 1971, as amended at 53 FR 36580, Sept. 21, 1988]

§ 213.3 Use of gender and number.

As used in this part, words importing the singular number may extend and be applied to several persons or things, and vice versa. Words importing the masculine gender may be applied to females or organizations.

§ 213.4 Suspension of rules.

Upon notice to all parties, the Administrator or the presiding officer, with respect to matters pending before him and within his jurisdiction, may modify or waive any rule in this part upon determination that no party will be unduly prejudiced and the ends of justice will thereby be served.

§ 213.5 Filing and service of papers.

(a) All papers in the proceedings shall be filed with the FSA Hearing Clerk, in an original and two copies. Originals only of exhibits and transcripts of testimony need be filed.

(b) All papers in the proceedings shall be served on all parties by personal delivery or by mail. Service on the party's designated attorney will be deemed service upon the party.

[36 FR 1454, Jan. 29, 1971, as amended at 53 FR 36580, Sept. 21, 1988]

Subpart B—Preliminary Matters—Notice and Parties

§ 213.11 Notice of hearing or opportunity for hearing.

Proceedings are commenced by mailing a notice of hearing or opportunity for hearing from the Administrator to the State. The notice shall state the time and place for the hearing, and the issues which will be considered, and shall be published in the FEDERAL REGISTER.

§ 213.12 Time of hearing.

The hearing shall be scheduled not less than 30 days nor more than 60 days after the date notice of the hearing is furnished to the State.

§ 213.13 Place.

The hearing shall be held in the city in which the regional office of the Department is located or in such other place as is fixed by the Administrator in light of the circumstances of the case, with due regard for the convenience and necessity of the parties or their representatives.

§ 213.14 Issues at hearing.

(a) The Administrator may, prior to a hearing under § 201.6 (a) or (b) of this chapter, notify the State in writing of additional issues which will be considered at the hearing, and such notice shall be published in the FEDERAL REGISTER. If such notice is furnished to the State less than 20 days before the date of the hearing, the State or any other party, at its request, shall be granted a postponement of the hearing to a date 20 days after such notice was furnished, or such later date as may be agreed to by the Administrator.

(b) If, as a result of negotiations between the Department and the State, the submittal of a plan amendment, a change in the State program, or other actions by the State, any issue is resolved in whole or in part, but new or modified issues are presented, as specified by the Administrator, the hearing shall proceed on such new or modified issues.

(c)(1) If at any time, whether prior to, during, or after the hearing, the Administrator finds that the State has come into compliance with Federal requirements on any issue, in whole or in part, he shall remove such issue from the proceedings in whole or in part, as may be appropriate. If all issues are removed, he shall terminate the hearing.

(2) Prior to the removal of any issue from the hearing, in whole or in part, the Administrator shall provide all parties other than the Department and the State (see § 213.15(b)) with the statement of his intention, and the reasons therefor, and a copy of the proposed State plan provision on which the State and he have settled, and the parties shall have opportunity to submit in writing within 15 days, for the Administrator's consideration and for the record, their views as to, or any information bearing upon, the merits of the proposed plan provision and the merits of the Administrator's reasons for removing the issue from the nearing.

(d) The issues considered at the hearing shall be limited to those issues of which the State is notified as provided in § 213.11 and paragraph (a) of this section, and new or modified issues described in paragraph (b) of this section, and shall not include issues or parts of issues removed from the proceedings pursuant to paragraph (c) of this section.

§ 213.15 Request to participate in hearing.

(a) The Department and the State are parties to the hearing without making a specific request to participate.

(b)(1) Other individuals or groups may be recognized as parties, if the issues to be considered at the hearing have caused them injury and their interest is within the zone of interests to be protected by the governing Federal statute.

(2) Any individual or group wishing to participate as a party shall file a petition with the FSA Hearing Clerk within 15 days after notice of the hearing has been published in the FEDERAL REGISTER, and shall serve a copy on each party of record at that time, in accordance with § 213.5(b). Such petition shall concisely state (i) petitioner's interest in the proceeding, (ii) who will appear for petitioner, (iii) the issues on which petitioner wishes to participate, and (iv) whether petitioner intends to present witnesses.

(3) Any party may, within 5 days of receipt of such petition, file comments thereon.

(4) The presiding officer shall promptly determine whether each petitioner has the requisite interest in the proceedings and shall permit or deny participation accordingly. Where petitions to participate as parties are made by individuals or groups with common interests, the presiding officer may request all such petitioners to designate a single representative, or he may recognize one or more of such petitioners to represent all such petitioners. The presiding officer shall give each petitioner written notice of the decision on his petition, and if the petition is denied, he shall briefly state the grounds for denial.

(c)(1) Any interested person or organization wishing to participate as amicus curiae shall file a petition with the FSA Hearing Clerk before the commencement of the hearing. Such petition shall concisely state (i) the petitioner's interest in the hearing, (ii) who will represent the petitioner, and (iii) the issues on which petitioner intends to present argument. The presiding officer may grant the petition if he finds that the petitioner has a legitimate interest in the proceedings, that such participation will not unduly delay the outcome and may contribute materially to the proper disposition of the issues. An amicus curiae is not a party but may participate as provided in this paragraph.

(2) An amicus curiae may present a brief oral statement at the hearing, at the point in the proceedings specified by the presiding officer. He may submit a written statement of position to the presiding officer prior to the beginning of a hearing, and shall serve a copy on each party. He may also submit a brief or written statement at such time as the parties submit briefs, and shall serve a copy on each party.

[36 FR 1454, Jan. 29, 1971, as amended at 53 FR 36580, Sept. 21, 1988]

Subpart C—Hearing Procedures

§ 213.21 Who presides.

(a) The presiding officer at a hearing shall be the Administrator or his designee.

(b) The designation of the presiding officer shall be in writing. A copy of the designation shall be served on all parties.

[39 FR 40850, Nov. 21, 1974]

§ 213.22 Authority of presiding officer.

(a) The presiding officer shall have the duty to conduct a fair hearing, to avoid delay, maintain order, and make a record of the proceedings. He shall have all powers necessary to accomplish these ends, including, but not limited to, the power to:

(1) Change the date, time, and place of the hearing, upon due notice to the parties. This includes the power to continue the hearing in whole or in part. In hearings pursuant to section 1116(a)(2) of the Social Security Act (see § 201.4 of this chapter), changes of time are subject to the requirements of the statute.

(2) Hold conferences to settle or simplify the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding.

(3) Regulate participation of parties and amici curiae and require parties and amici curiae to state their position with respect to the various issues in the proceeding.

(4) Administer oaths and affirmations.

(5) Rule on motions and other procedural items on matters pending before him including issuance of protective orders or other relief to a party against whom discovery is sought.

(6) Regulate the course of the hearing and conduct of counsel therein.

(7) Examine witnesses.

(8) Receive, rule on, exclude or limit evidence or discovery.

(9) Fix the time for filing motions, petitions, briefs, or other items in matters pending before him.

(10) If the presiding officer is the Administrator, make a final decision.

(11) If the presiding officer is a hearing examiner, certify the entire record including his recommended findings and proposed decision to the Administrator.

(12) Take any action authorized by the rules in this part or in conformance with the provisions of 5 U.S.C. 551 through 559.

(b) The presiding officer does not have authority to compel by subpoena the production of witnesses, papers, or other evidence.

(c) If the presiding officer is a hearing examiner, his authority pertains to the issues of compliance by a State with Federal requirements which are to be considered at the hearing, and does not extend to the question of whether, in case of any noncompliance, Federal payments will not be made in respect to the entire State plan or will be limited to categories under or parts of the State plan affected by such noncompliance.

[40 FR 50272, Oct. 29, 1975]

§ 213.23 Rights of parties.

All parties may:

(a) Appear by counsel or other authorized representative, in all hearing proceedings.

(b) Participate in any prehearing conference held by the presiding officer.

(c) Agree to stipulations as to facts which will be made a part of the record.

(d) Make opening statements at the hearing.

(e) Present relevant evidence on the issues at the hearing.

(f) Present witnesses who then must be available for cross-examination by all other parties.

(g) Present oral arguments at the hearing.

(h) Submit written briefs, proposed findings of fact, and proposed conclusions of law, after the hearing.

§ 213.23a Discovery.

The Department and any party named in the notice issued pursuant to § 213.11 shall have the right to conduct discovery (including depositions) against opposing parties. Rules 26-37 of the Federal Rules of Civil Procedures shall apply to such proceedings; there will be no fixed rule on priority of discovery. Upon written motion, the Presiding Officer shall promptly rule upon any objection to such discovery action initiated pursuant to this section. The Presiding Officer shall also have the power to grant a protective order or relief to any party against whom discovery is sought and to restrict or control discovery so as to prevent undue delay in the conduct of the hearing. Upon the failure of any party to make discovery, the Presiding Officer may, in his discretion, issue any order and impose any sanction (other than contempt orders) authorized by Rule 37 of the Federal Rules of Civil Procedure.

[40 FR 50272, Oct. 29, 1975]

§ 213.24 Evidentiary purpose.

The hearing is directed to receiving factual evidence and expert opinion testimony related to the issues in the proceeding. Argument will not be received in evidence; rather it should be presented in statements, memoranda, or briefs, as determined by the presiding officer. Brief opening statements, which shall be limited to statement of the party's position and what he intends to prove, may be made at hearings.

§ 213.25 Evidence.

(a) *Testimony.* Testimony shall be given orally under oath or affirmation by witnesses at the hearing. Witnesses shall be available at the hearing for cross-examination by all parties.

(b) *Stipulations and exhibits.* Two or more parties may agree to stipulations of fact. Such stipulations, or any exhibit proposed by any party, shall be exchanged at the prehearing conference or otherwise prior to the hearing if the presiding officer so requires.

(c) *Rules of evidence.* Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the presiding officer. A witness may be cross-examined on any matter material to the proceeding without regard to the scope of his direct examination. The presiding officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues.

§ 213.26 Exclusion from hearing for misconduct.

Disrespectful, disorderly, or contumacious language or contemptuous conduct, refusal to comply with directions, or continued use of dilatory tactics by any person at the hearing before a presiding officer shall constitute grounds for immediate exclusion of such person from the hearing by the presiding officer.

§ 213.27 Unsponsored written material.

Letters expressing views or urging action and other unsponsored written material regarding matters in issue in a hearing will be placed in the correspondence section of the docket of the proceeding. These data are not deemed part of the evidence or record in the hearing.

§ 213.28 Official transcript.

The Department will designate the official reporter for all hearings. The official transcripts of testimony taken, together with any stipulations, exhibits, briefs, or memoranda of law filed therewith shall be filed with the Department. Transcripts of testimony in hearings may be obtained from the official reporter by the parties and the public at rates not to exceed the maximum rates fixed by the contract between the Department and the reporter. Upon notice to all parties, the presiding officer may authorize corrections to the transcript which involve matters of substance.

§ 213.29 Record for decision.

The transcript of testimony, exhibits, and all papers and requests filed in the proceedings, except the correspondence section of the docket, including rulings and any recommended or initial decision shall constitute the exclusive record for decision.

Subpart D—Posthearing Procedures, Decisions

§ 213.31 Posthearing briefs.

The presiding officer shall fix the time for filing posthearings briefs, which may contain proposed findings of fact and conclusions of law, and, if permitted, reply briefs.

§ 213.32 Decisions following hearing.

(a) If the Administrator is the presiding officer, he shall, when the time for submission of posthearing briefs has expired, issue his decision within 60 days.

(b)(1) If a hearing examiner is the presiding officer, he shall, when the time for submission of posthearing briefs has expired, certify the entire record, including his recommended findings and proposed decision, to the Administrator. The Administrator shall serve a copy of the recommended findings and proposed decision upon all parties, and amici, if any.

(2) Any party may, within 20 days, file with the Administrator exceptions to the recommended findings and proposed decision and a supporting brief or statement.

(3) The Administrator shall thereupon review the recommended decision and, within 60 days of its issuance, issue his own decision.

(c) If the Administrator concludes that a State plan does not comply with Federal requirements, he shall also, in the case of a hearing pursuant to

§ 201.6(a) of this chapter, specify whether further payments will not be made to the State or whether, in the exercise of his discretion, payments will be limited to categories under or parts of the State plan not affected by such noncompliance. The Administrator may ask the parties for recommendations or briefs or may hold conferences of the parties on this question.

(d) The decision of the Administrator under this section shall be the final decision of the Secretary and shall constitute "final agency action" within the meaning of 5 U.S.C. 704 and a "final determination" within the meaning of section 1116(a)(3) of the Act and § 201.7 of this chapter. The Administrator's decision shall be promptly served on all parties, and amici, if any.

[36 FR 1454, Jan. 29, 1971, as amended at 36 FR 21520, Nov. 10, 1971]

§ 213.33 Effective date of Administrator's decision.

If, in the case of a hearing pursuant to § 201.6(a) of this chapter, the Administrator concludes that a State plan does not comply with Federal requirements, his decision that further payments will not be made to the State, or payments will be limited to categories under or parts of the State plan not affected, shall specify the effective date for the withholding of Federal funds. The effective date shall not be earlier than the date of the Administrator's decision and shall not be later than the first day of the next calendar quarter. The provisions of this section may not be waived pursuant to § 213.4.

PART 224—WORK INCENTIVE PROGRAMS FOR AFDC RECIPIENTS UNDER TITLE IV OF THE SOCIAL SECURITY ACT

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224.1 Definitions.

Subpart B—Administration

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224.12 [Reserved]
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224.14 Allocation of Federal funds.
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224.17 Reports, records, financial statements and audits.
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224.71 Appeals to the NRP.
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224.77 Subsequent WIN registration by deregistered individuals.

AUTHORITY: Secs. 402(a)(19), 430-444 and 1102, Social Security Act (42 U.S.C. 602(a)(19), 630-644, and 1302); secs. 202 and 204, Pub. L. 100-485, 102 Stat. 2377, 2381.

SOURCE: 41 FR 47688, Oct. 29, 1976, unless otherwise noted.

Subpart A—Purpose and Scope and Definitions

§ 224.0 Purpose and scope.

(a) The purpose of this Part 224 is to provide for a Work Incentive Program (WIN) under Title IV of the Social Security Act (Act).

(b) This part contains the policies, rules, and regulations pertaining to the WIN program.

(c) The provisions of this part do not apply to any State IV-A agency which has an approved JOBS plan under § 250.20. A list of State IV-A agencies with approved JOBS plans is available from the Family Support Administration, Office of Family Assistance, 370 L'Enfant Promenade, SW., Washington, DC 20447. For all State IV-A agencies the provisions of this Part are repealed as of October 1, 1990.

[41 FR 47688, Oct. 29, 1976, as amended at 54 FR 42243, Oct. 13, 1989]

§ 224.1 Definitions.

Act means the Social Security Act.

AFDC (Aid to Families with Dependent Children) means the program authorized by Title IV-A of the Act to provide financial assistance and social services to needy families with dependent children.

AFDC Applicant means a person who applies to the State or local welfare agency for AFDC.

Appraisal means the interview of a WIN registrant by WIN sponsor staff and Separate Administrative Unit (SAU) staff to determine employability potential, to determine the need for supportive services, and to develop an employability plan.

Certification means a written notice from the SAU that necessary supportive services have been arranged or are available to enable a WIN registrant to accept employment, training, manpower services, or other employment related activities, or that no supportive services are needed and that the individual is at that time ready for employment or training.

Complaints (See grievances).

Component means a structured regularly scheduled program activity for certified registrants such as OJT, WIN, PSE, institutional training, and work experience, but not employment-related activities or supportive services.

Deregistration means the removal of an individual from the WIN program.

DHHS means the U.S. Department of Health and Human Services.

DOL means the U.S. Department of Labor.

Employability Plan means a written plan for a WIN registrant that sets forth that individual's occupational goal and the manpower and supportive services necessary for him to reach that goal.

Employment-related Activities means activities providing employment and training services to WIN registrants to assist them in locating and securing unsubsidized employment. Employment-related activities include employment search.

Employment search is the part of employment-related activities where registrants are provided with job seeking skills, job development assistance and referrals, and actively contact employers in their effort to secure jobs.

Exempt refers to an AFDC applicant or recipient who is not required by the Act to register for employment, training, or other employment-related activities under the WIN program as a condition of eligibility for AFDC.

Grievance means an adjudicable issue initiated by a WIN registrant which does not involve the threat of sanction. Grievances may include, but are not limited to disputes over assignments where the registrant is not refusing the assignment, alleged discrimination, and complaints about eligibility for, or amounts of, WIN allowances.

Hearing Officer means the hearing officer designated in the State WIN plan to hear and decide or make recommendations on issues involving WIN.

Income Maintenance Unit (IMU) means the unit of the State or local welfare agency which determines individuals' eligibility for AFDC.

Institutional training means vocational or other classroom training conducted by an instructor in a nonwork-site setting.

Local WIN Plan means the plan developed annually by local WIN sponsor and SAU staffs which describes the operation of the WIN program for a specific local area.

Mandatory or nonexempt registrant means an AFDC applicant or recipient who is required by the Act to register for manpower services training, employment, or other employment-related activities as a condition of eligibility for AFDC.

Manpower services means employment related and training services provided by the WIN sponsor, designed to improve the work skills of an individual and aid him to find employment.

NCC means the National Coordination Committee, a committee established to administer the WIN program, consisting of the Assistant Secretary for Employment and Training (DOL) and the Administrator of the Social and Rehabilitation Service (DHHS).

NRP means the National Review Panel, the final level of administrative review which is comprised of the DOL Chief Administrative Law Judge and other Administrative Law Judges appointed pursuant to the Administrative Procedure Act's requirements and designated by the Chief Judge to serve as members of that panel.

OJT means on-the-job training, an employment opportunity component in which a certified registrant is hired by a private or public employer and is provided training under contract with the employer.

PSE means public service employment, a WIN sponsored component which provides subsidized employment with public or nonprofit private agencies for individuals who cannot be placed in regular unsubsidized employment.

Recipient means an individual who has been determined to be eligible to receive AFDC.

RA means the Regional Administrator, Employment and Training Administration (DOL).

RC means the Regional Commissioner of the Social and Rehabilitation Service (DHHS).

RCC means the Regional Coordination Committee established in each region consisting of the ARDM and the RC.

Registrant means an AFDC applicant or recipient who has registered with the WIN sponsor for manpower services, training, employment, and other employment-related activities.

Registration means the process whereby an AFDC applicant or recipient completes all necessary registration requirements.

SAU means the Separate Administrative Unit, that unit of the State welfare agency established pursuant to section 402(a)(19)(G) of the Act, to administer the WIN program for that agency.

State welfare agency means the welfare agency designated pursuant to 45 CFR 205.100 with authority to administer or supervise the administration of the State plan approved under title IV-A of the Act.

State means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam.

State plan means the State plan for AFDC approved under title IV, A of the Act.

State WIN Plan means the Statewide operational plan for WIN, covering AFDC applicants and recipients who register for employment, other employment-related activities, manpower services and training under WIN, developed by the WIN sponsor and SAU in each state and approved and supervised by the RCC under title IV, of the Act.

Supportive services means those social services provided or arranged by the SAU, necessary to enable an individual to engage in employment, other employment-related activities, or training.

Training related expenses means those expenses, reimbursable from WIN funds, that are incurred by individuals participating in WIN program components and activities.

Volunteer means an AFDC applicant or recipient who, though exempt from WIN registration, volunteers for WIN and registers for employment, other employment-related activities, manpower services and training.

Welfare hearing officer means the hearing officer designated by the welfare agency to hear and decide or make recommendations on issues relating to exemption or nonexemption for WIN registration.

WIN incentive payment means a cash payment of up to $30 per month, paid to an individual who is participating in an institutional or work experience component.

WIN sponsor means the State agency (such as the State employment service) or other public or nonprofit private agency which, through agreement with the RA, administers the WIN manpower program under Part C of title IV of the Act at the State or local level.

Work experience training means a clearly defined, well-supervised assignment with a public or nonprofit private employer.

[41 FR 47688, Oct. 29, 1976, as amended at 46 FR 48652, Oct. 2, 1981]

Subpart B—Administration

§ 224.10 General administration provisions.

(a) The WIN program is administered jointly by the Secretary of Labor and the Secretary of Health and Human Services. To carry out Department of Labor responsibilities under these regulations, the Secretary of Labor has designated the Assistant Secretary Employment and Training (Assistant Secretary). To carry out Department of Health and Human Services responsibilities under these regulations, the Secretary of Health and Human Services has designated the Administrator of the Social and Rehabilitation Service (Administrator).

(b) The Assistant Secretary and the Administrator together form the WIN National Coordination Committee (NCC) which is responsible for the effective national administration of WIN.

(c) The NCC shall issue a WIN Handbook, establish uniform reporting procedures, establish and clarify policy under these regulations, and establish other requirements for effective administration. NCC issuances shall be binding on all regional, State, and local WIN operations.

(d) The NCC shall designate a national Executive Director to administer the program.

(e) The Assistant Secretary has designated the Assistant Regional Director, Employment and Training Administration in each region (RA) to carry out the WIN program in each region. The Administrator has designated the Regional Commissioner (RC) of the Social and Rehabilitation Service to carry out his responsibilities under these regulations in each region.

(f) Within each region the RA and the RC shall form the WIN Regional Coordination Committee (RCC). The RCC shall review and approve all State WIN plans and modifications of such plans covering the States in its region. Consistent with directives of the NCC, it shall also establish and clarify policy under these regulations and shall establish other requirements for effective administration.

(g) The RCC shall enter into an agreement with the State WIN sponsor and the State welfare agency under which they shall be responsible for the overall administration of the State WIN plan.

(h) Within each state the welfare agency's Separate Administrative Unit (SAU) shall be responsible for the provision and arrangement of supportive services. The Income Maintenance Unit (IMU) of each State welfare agency is responsible for determining all questions relating to eligibility for AFDC benefits, including whether an individual is required to register for WIN.

(The information collection requirements contained in paragraph (c) were approved by the Office of Management and Budget under control number 1205-0155. The information collection requirements contained in paragraphs (f) and (g) were approved under control number 1205-0214)

[41 FR 47688, Oct. 29, 1976, as amended at 51 FR 9441, Mar. 19, 1986]

§ 224.11 Annual State WIN plans.

(a) State WIN plans on an annual basis shall be jointly developed and approved by the State WIN sponsor and State welfare agency. The NCC shall issue instructions setting guidelines to the State WIN sponsor and State welfare agency for the development of State plans. The plan shall indicate those areas in which the State WIN sponsor and welfare agency, after considering such factors as size of the welfare case load and budgetary constraints, propose to operate WIN projects. Each State WIN plan shall describe the operation to be carried out by the State WIN sponsor and the State welfare agency as well as a summary of the data in the local WIN plans, as required by paragraph (b) of this section. The State WIN plan shall also provide for the establishment of Labor Market Advisory Councils in accord with section 432(f) of the Act.

(b) Each local WIN sponsor and each local SAU shall jointly develop an annual local WIN plan after consulting with other agencies as appropriate. Such plan shall describe the local project's operation. The NCC will issue instructions setting guidelines for the development of such plans.

(c) Local WIN plans shall be forwarded to the State WIN sponsor and State SAU for consideration in the development of the State WIN plan.

(d)(1) The State WIN sponsor and State welfare agency shall:

(i) Submit the State WIN plan (with local WIN plans attached) to the appropriate RCC for action;

(ii)—(iii) [Reserved]

(iv) Request the Governor and the Council to send any comments directly to the RCC, (with copies to the State WIN sponsor and the State welfare agency), within 45 days from the date that copies of the State WIN plan were mailed to them.

(2) The RCC shall consider any such comments in reviewing the plan, and shall not take final action on the plan until the Governor's and Council's comments have been received, or until the 45 days referred to in paragraph (d)(1)(iv) of this section have elapsed, whichever is earlier.

(Approved by the Office of Management and Budget under control number 1205-0214)

[41 FR 47688, Oct. 29, 1976, as amended at 48 FR 29202, June 24, 1983; 51 FR 9441, Mar. 19, 1986]

§ 224.12 [Reserved]

§ 224.13 State and local agreements for WIN activities and programs.

A WIN sponsor may, through agreements with public or private agencies or organizations, including Indian tribes with respect to Indians on a reservation, carry out such activities and programs as are approved or developed by the Secretary of Labor, including but not limited to public service employment programs, intensive manpower services programs, institutional programs, on-the-job training programs, and work experience programs. Work experience programs and public service employment agreements may be entered into only with public agencies and nonprofit private employers organized for a public purpose.

§ 224.14 Allocations of Federal funds.

(a) The Secretary of Labor shall allocate not less than 50 percent of the sums appropriated under Part C of title IV of the Act to carry out the WIN program among the States in accordance with a formula under which each State receives (from the total available for such allotment) an amount which bears the same ratio to the total amount available as the average number of individuals in each State who, during the month of January last preceding the commencement of such fiscal year, are registered pursuant to section 402(a)(19)(A) of the Act, bears to the average number of individuals in all States who, during that month, are so registered.

(b) The Secretary of Labor shall allocate the balance of the sums not allocated under paragraph (a) of this section in such manner as he determines will best serve the objectives of the program.

(c) Of the sums expended on WIN by the Department of Labor not less than 33⅓ percent thereof shall be expended for carrying out the programs of on-the-job training and public service employment which meet criteria specified in the WIN Handbook issued under § 224.10.

(d) The Secretary of Health and Human Services shall prescribe methods for the allocation of funds pursuant to section 403(d) of the Act for the 50 States and the District of Columbia. For Puerto Rico, Guam and the Virgin Islands, the Secretary of Health and Human Services shall allocate funds pursuant to section 1108 of the Act.

§ 224.15 Use of Federal funds; political activities.

(a) Federal funds under Part C of title IV of the Act, allocated by the Secretary of Labor to the State WIN sponsor, may be used to meet not more than 90 percent of the cost of carrying out the regulations promulgated under this part.

(b) WIN funds under Part C of title IV of the Act may be used for training, supervision, materials, administration, incentive payments, transportation fees for medical examinations required for the determination of exempt status under § 224.20 or incapacity for work assignment under § 224.34(a)(2) and other items as authorized by the Secretary of Labor, but may not, except in cases of WIN/PSE under the Act, be used for any reimbursement to the employer for time spent by individuals in work.

(c) WIN funds under section 403(d) of the Act may be used to meet 90 percent of the cost of supportive services, including child care, provided by or arranged for by the SAU, for AFDC recipients who are certified to WIN, and SAU administrative costs for all registrants.

(d) Federal funds shall be expended only for costs:

(1) Permitted under the provisions of Subpart 1-15.7 of Title 41 of the Code of Federal Regulations, entitled "Principles for Determining Costs Applicable to Grants and Contracts"; and

(2) Not barred under the provisions of this part.

(e) Pursuant to section 403(c) of the Act, notwithstanding any other provision of this chapter, the Federal share of assistance payments under title IV-A of the Act for any fiscal year shall be reduced by 1 percentage point for each percentage point by which the number of individuals certified to the WIN sponsor as ready for employment or training under the WIN program falls below 15 percent of the average number of individuals in the State who are required to be registered during such fiscal year.

(f) No funds allocated under the Act shall be used for any partisan or nonpartisan political activity or to further the election or defeat of any candidate for public office; nor shall they be used to provide services, or for the employment or assignment of personnel in a manner supporting or resulting in the identification of programs conducted pursuant to the Act with:

(1) Any partisan or nonpartisan political activity or any other political activity associated with a candidate, or contending faction or group, in an election for public or party office, or lobbying for any matter at public issue;

(2) Any activity to provide voters or prospective voters with transportation to the polls or similar assistance in connection with any such election;

(3) Any voter registration activity.

§ 224.16 Non-Federal contribution.

(a) A State plan under title IV-A of the Act must provide that the State welfare agency will assure a non-Federal contribution to the Work Incentive programs established under Part C of the Act by appropriate agencies of the State or private organizations of 10 percent of the total cost of such programs, in cash or in-kind fairly evaluated. For this purpose, the State welfare agency will plan jointly with the State WIN sponsor for the development and use of in-kind resources. The State welfare agency must make the arrangements for, but need not itself make, the contribution. An in-kind contribution may be made in the form of the provision of services, staff, space, equipment, or any other goods or services of value essential to the operation of the WIN program. Where such contribution is in-kind, the amount thereof will be determined on the basis of its reasonable value as established by suitable documentation.

(b) The State welfare agency shall assure a non-Federal cash or in-kind contribution of 10 percent of the cost of supportive services and related administrative expenses incurred by the SAU under Title IV-A of the Act.

(c) The WIN sponsor costs of operation of the WIN program which may be met by the non-Federal contribution may include the costs of training, supervision, materials, administration, incentive payments, transportation, and other items as are authorized by the WIN sponsor.

(d) Funds from other Federal sources, whether in cash or in-kind, may not be used for the non-Federal share, except when specifically permitted by law. State funds or resources that have been used to match other Federal funds also may not be used for this purpose.

(e) If the State welfare agency fails to make arrangements for the non-Federal contribution of 10 percent of the total Statewide program costs of operation, pursuant to paragraph (a) of this section, the Secretary of Health and Human Services may withhold, under the conditions specified in the law, the equivalent of amounts to be paid from the grants to the State agency for the public assistance titles.

(f) The provisions of Federal Management Circular (FMC) 74-7 must be met.

[41 FR 47688, Oct 29, 1976, as amended at 46 FR 48652, Oct. 2, 1981]

§ 224.17 Reports, records, financial statements and audits.

(a) State and local WIN sponsors and welfare agencies shall submit periodic reports as required by DOL and DHHS to assure proper accounting for all program funds, including the non-Federal share. Such records and accounts shall be made available for audit purposes to DOL and DHHS, the Comptroller General of the United States or any authorized representative of these agencies, and shall be retained for 3 years from the date of submission of the final expenditure report or from the date of submission of the annual expenditure report for payments under a grant or contract, whichever is earlier. The records shall be retained beyond the 3-year period if audit findings have not been resolved. State and local WIN sponsors and welfare agencies shall also submit periodic reports as required by DOL and DHHS covering non-financial program activities.

(b) Program funds and activities shall be audited in conformity with the Standards for Audit of Government Organizations, Programs Activities and Functions issued by the Comptroller General of the United States.

(Approved by the Office of Management and Budget under control number 1205-0155)

[41 FR 47688, Oct. 29, 1976, as amended at 46 FR 48613, Oct. 1, 1981]

§ 224.18 Adjustments in payments to WIN sponsors.

(a) If any funds are expended by a WIN sponsor or by a public service employer in violation of the Act, the regulations, grant conditions or contract provisions, the Secretary of Labor may make necessary adjustments in payments to the sponsor or the employing agency on account of such unauthorized expenditures. He may draw back unexpended funds which have been made available in order to assure that they will be used in accordance with the purposes of the Act, or to prevent further unauthorized expenditures and he may withhold funds otherwise payable under the Act in order to recover any amounts expended for unauthorized purposes in the current or immediately preceding fiscal year.

(b) No action taken by the Secretary of Labor under paragraph (a) of this section shall entitle the WIN sponsor to reduce program activities or allowances for any registrant or to expend less during the effective period of the contract or grant than those sums called for in the State WIN plan. Any such reduction in expenditures may be deemed sufficient cause for termination.

§ 224.19 Termination of contracts or grants.

(a) If a WIN sponsor or IMU violates any provision of the Act or the regulations in this part, or contract provisions or grant conditions which the Secretary of Labor has issued or shall subsequently issue during the period of the contract or grant, the Secretary of Labor may terminate the contract or grant in whole or in part unless the agency which caused the violation corrects it within a period of 30 days after receipt of notice specifying the violation; or

(b) In his discretion, the Secretary of Labor may terminate the contract or grant in whole or in part;

(c) Termination shall be effected by a notice of termination which shall specify the extent of termination and the date upon which such termination becomes effective. Upon receipt of a notice of termination the agency shall:

(1) Discontinue further commitments of contract or grant funds to the extent that they relate to the terminated portion of the contracts or grants;

(2) Promptly cancel all contracts or subcontracts utilizing funds under the contract or grant to the extent that they relate to the terminated portion of the contract or grant;

(3) Settle, with the approval of the Secretary of Labor, all outstanding claims arising from such termination;

(4) Submit, within 6 months after the receipt of the notice of termination, a termination settlement proposal which shall include a final statement of all unreimbursed costs related to the terminated portion of the contract or grant but in the case of terminations under paragraph (a) of this section will not include the cost of preparing a settlement proposal. Allowable cost shall be determined in accordance with the provisions of Part 1-15.7 of Title 41 of the Code of Federal Regulations and Federal Management Circular (FMC) 74-4.

Subpart C—Requirements and Procedures for Registration, Appraisal and Certification

§ 224.20 Registration requirements for AFDC applicants and recipients; State plan requirements.

A State plan under Title IV-A of the Social Security Act must provide that:

(a) All applicants and recipients who are required to register by section 402(a)(19)(A) of the Act, shall register for manpower services, training, employment, and other employment-related activities as a condition of eligibility for AFDC, except as otherwise provided under paragraph (b) of this section;

(b) The Income Maintenance Unit (IMU) of the State or local welfare agency shall determine which AFDC applicants and recipients are exempt from registration and which are required to register as a condition of eligibility for AFDC benefits. Based on the following criteria: Each AFDC applicant and recipient shall register unless he or she is:

(1) Under age 16;

(2) A full-time student (as defined in State welfare regulations), aged 16 but under age 18 who is attending an elementary or secondary school, or a vocational or technical school that is equivalent to a secondary school; or a full-time student under age 19, if the State AFDC plan extends coverage to children under age 19, who is attending a secondary school or a program in a vocational or technical school that is equivalent to a secondary school and is reasonably expected to complete such school or program before reaching age 19 ;

(3) Ill, when determined by the IMU on the basis of medical evidence or on another sound basis that the illness or injury is serious enough to temporarily prevent entry into employment or training;

(4) Incapacitated, when verified by the IMU that a physical or mental impairment, determined by a physician or licensed or certified psychologist, by itself or in conjunction with age, prevents the individual from engaging in employment or training under WIN;

(5) 65 years of age or older;

(6) Residing outside of a WIN project area specified in the State WIN plan or residing within a WIN project area at a location which is so remote from a WIN office or service unit that effective participation in the program is precluded. The individual shall be considered remote if a round trip of more than 2 hours by reasonably available public or private transportation, exclusive of time necessary to transport children to and from a child care facility, would be required for a normal work or training day, unless normal round trip commuting time in tne area is more than 2 hours, in which case the round trip commuting time shall not exceed the generally accepted community standards;

(7) A person in the home, and the IMU has verified that a physical or mental impairment, as determined by a physician or licensed or certified psychologist, of another member of the household requires the individual's presence in the home on a substantially continuous basis, and that no other appropriate member of the household is available;

(8) A parent or other caretaker relative of a child under age 6 who personally provides full-time care of the child with only very brief and infrequent absences from the child;

(9) A parent or other caretaker of a child who is deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, if another adult relative in the home, or phyusical or mental incapacity of a parent, if another adult relative in the home is registered and has not failed or refused to participate in the program or to accept employment without good cause;

(10) A person who is working not less than 30 hours per week in unsubsidized employment expected to last a minimum of 30 days. This exemption continues to apply if there is a temporary break in full-time employment expected to last no longer than 10 work days;

(11) The parent of a child who is deprived of parental support or care by reason of the unemployment of a parent, if the other parent (who is the principal earner as defined in 45 CFR 233.100(a)) is not exempt under one of the other preceding clauses of this section.

(12) A pregnant woman when it is verified by the IMU, on the basis of medical evidence, that the child is expected to be born in the month that registration otherwise would be required or within the next 3 months.

(13) An individual employed under a Work Supplementation Program established under Part 239 of this chapter.

(c) The IMU shall inform each applicant and recipient in writing that:

(1) The needs of any nonexempt applicant or recipient who fails to register as required will not be taken into account in determining the need and the amount of the AFDC assistance payment;

(2) Exempt applicants and recipients must report to the IMU any changes which affect their exempt status;

(3) Any applicant or recipient has a right to a hearing before the State welfare agency to contest a determination of nonexempt status or to contest a denial of AFDC benefits when such benefits have been denied because of his refusal to register for WIN;

(4) Exempt applicants and recipients in WIN project areas may choose to register voluntarily for manpower services, training, employment, and employment-related activities, and may withdraw such registration at any time without loss of AFDC benefits, provided their status has not changed in a way which would require registration; and

(5) Nonexempt applicants and recipients, along with exempt individuals who volunteer for WIN, shall report to a specified place of registration at the office of the WIN sponsor or its approved agent.

(d) The IMU shall immediately refer all applicants and recipients, whom it has determined to be nonexempt, and all volunteers, to the WIN sponsor or its approved agent for registration.

(e) The IMU shall refer individuals who have been determined to be exempt from registration on the basis of incapacity to the appropriate State vocational rehabilitation agency.

(f) The IMU of the welfare agency shall include a redetermination of exemption as a part of the AFDC eligibility redetermination process, except where an individual has been determined to be 65 years of age or older, or permanently incapacitated.

(g) The IMU shall notify the WIN sponsor within 3 working days of any welfare determination which may affect an individual's WIN status.

[41 FR 47688, Oct. 29, 1976, as amended at 46 FR 46806, Sept. 22, 1981; 46 FR 48652, Oct. 2, 1981; 50 FR 6166, Feb. 14, 1985; 51 FR 9440, Mar. 19, 1986]

§ 224.21 Registration procedures.

(a) The WIN sponsor shall promptly register all individuals found by the IMU to be nonexempt, and all individuals who volunteer for WIN, when they appear at the WIN office so that eligibility determinations are not delayed. Where special conditions warrant (such as a paucity of WIN sponsor offices in an area), the WIN sponsor may, with the concurrence of the RCC, contract with other public or private nonprofit agencies in specified areas to carry out registration activities. Under this requirement, the WIN sponsor (or its approved agency) shall:

(1) Obtain a complete work history on each applicant and recipient;

(2) Notify each registrant about the nature of the WIN program and about his rights and responsibilities therein;

(3) Provide each registrant with written proof of registration;

(4) If the IMU has determined an individual to be nonexempt and the WIN sponsor disagrees, register the individual and request the IMU to reconsider its determination. The IMU's response will be accepted by the WIN sponsor. If the IMU reverses its decision, the WIN sponsor shall deregister the individual as exempt unless the individual volunteers for WIN. If the IMU does not respond within 30 days of the request, the WIN sponsor shall deregister the individual as exempt;

(5) Notify the IMU of any employment or other change of status which may affect an individual's AFDC eligibility or the amount of the AFDC payment. Included in this notification will be the hours and expected duration of employment.

(6) Notify the IMU, within 3 working days of the registration, that registration has been completed so that the IMU's completion of the welfare eligibility determination shall not be delayed; and

(7) Provide all registrants, at the time of registration, job market information and referral to available employment. All appropriate job market information available to the WIN Sponsor, including Job Bank, shall be used to provide this information and facilitate such referrals.

(b) The needs of any individual who fails to register as required under paragraph (a) of this section shall not be taken into account in determining the need of the family and the amount of assistance, and assistance will be furnished to the eligible members of the family;

(c) Where the WIN sponsor is the State public employment service, the registration required of unemployed fathers under section 407(b)(2)(c)(i) of the Act may be completed at the WIN office. This will fulfill the WIN registration requirement under section 402(a)(19)(A) of the Act.

[41 FR 47688, Oct. 29, 1976, as amended at 46 FR 48652, Oct. 2, 1981]

§ 224.22 Appraisal and certification.

(a) The appraisal interview shall be conducted jointly to the extent possible, or sequentially as appropriate, by the WIN sponsor and the SAU. Whenever possible, appraisal shall occur at the time of registration. An employability plan shall be initiated by the WIN sponsor and the SAU at the appraisal interview for each registrant who is found suitable for participation in the WIN program. The decision to refer an individual to employment or to a work or training component rests with the WIN sponsor.

(b) All unemployed parents who are principal earners as defined in 45 CFR 233.100(a) shall be appraised within 2 weeks of the determination of eligibility for AFDC benefits, and appraisal shall occur prior to certification. Certification shall be completed no later than 30 days from the receipt of AFDC benefits.

(c) Other individuals will be appraised according to the following priorities, taking into account the individual's employment potential:

(1) Mothers, whether or not required to register, who volunteer;

(2) Other mothers, and pregnant women under 19 years of age, who are required to register;

(3) Dependent children and relatives who have attained age 16 and who are not in school full-time or engaged in work or manpower training; and

(4) Others.

(d) The employability plan shall contain a manpower services plan and a supportive services plan, and shall be designed to lead to employment and ultimately to self-support. It shall contain a definite employment goal, attainable in the shortest time period consistent with the supportive services needs, project resources, and job market opportunities. Final approval of the employability plan rests with the WIN sponsor.

(e) The SAU shall certify in writing that the necessary immediate and ongoing supportive services have been provided or arranged, or that no such services are required for those individuals who have been selected for participation in a WIN component. The SAU shall also certify registrants who are recipients who are selected to participate in employment-related activities. When certified, the individual shall be placed in employment if appropriate work that the individual can perform is available. If the individual cannot be immediately placed in employment, he shall be placed in employment-related activities, on-the-job training, public service employment, institutional training or in any other manpower program or activity.

(f) The SAU may provide or arrange for social services for AFDC applicants to enable them to participate in employment-related activities. Such applicants may be certified, or services may be provided or arranged on an occasional basis without certification.

(g) Registrants who find employment or are placed by the WIN sponsor may be certified and necessary supportive services may be provided.

(h) AFDC grants and social services for individuals under the State AFDC plan shall not be denied by reason of the individual's referral to a job to a WIN program, or solely by reason of an individual's participation therein.

(Approved by the Office of Management and Budget under control number 1205-0156)

[41 FR 47688, Oct. 29, 1976, as amended at 46 FR 46806, Sept 22, 1981; 46 FR 48652, Oct. 2, 1981; 51 FR 9441, Mar. 19, 1986]

Subpart D—Supportive and Manpower Services and Protective Provisions

§ 224.30 Supportive services; State plan requirements.

A State plan under Part A of title IV of the Act must provide that:

(a) Within the State agency there will be separate administrative units which will, to the maximum extent possible, perform functions only in connection with the WIN program. To the maximum extent feasible, local SAU staff and WIN employment and training staff should be located together to foster more efficient working arrangements for joint appraisals, the development of employability plans, and the provision of services to registrants.

(b) The SAU shall be responsible for:

(1) Developing, jointly with the State WIN sponsor, and approving, a State WIN plan in accordance with section 433(b) of the Act;

(2) Developing and supplying social services necessary to enable a registrant to accept employment, training for employment, or other employment-related activities. Necessary services shall continue for a period of 30 days after the start of unsubsidized employment and may continue for a maximum of 90 days at the discretion of the SAU. Such services may be provided even after the AFDC grant has been discontinued due to employment. In an emergency such services may also be provided for a period of up to 30 days to enable a registrant to continue existing employment;

(3) Participating with the WIN sponsor in appraisal and certification, in the development of employability plans pursuant to § 224.22, and in efforts to resolve grievances and disputes informally.

(4) Certifying in writing to the WIN sponsor that the individual is ready for WIN manpower services when the WIN sponsor requests such certification and the supportive services, if any, have been provided or arranged for; and

(c) Supportive services under the WIN program shall include:

(1) Child care which meets the standards specified in 45 CFR 228.42. When more than one kind of child care is available, the mother or other caretaker relative may choose the type, but may not refuse to accept child care services if they are available. Such services must be responsive to breakdowns in prior arrangements in order to ease or avoid disruption of employment or participation in manpower services;

(2) Family planning services;

(3) Counseling services;

(4) Employment related medical, remedical, and health-related care services not included under the State's Title XIX plan or otherwise available;

(5) Selected vocational rehabilitation services, as defined by the Rehabilitation Act of 1973, which cannot otherwise be funded by the vocational rehabilitation agency;

(d) Other supportive services included in the State WIN plan may be provided if they are necessary to enable registrants to accept employment or receive manpower training.

(e) Supportive services may be provided for up to two weeks to a registrant between participation in WIN components or between participation in a component or employment-related activities and the start of employment in order to avoid interruption of the employability process.

[41 FR 47688, Oct. 29, 1976, as amended at 46 FR 48653, Oct. 2, 1981]

§ 224.31 [Reserved]

§ 224.32 Pay and allowances for WIN registrants.

(a) An individual assigned to employment search shall receive an allowance for necessary expenses for participation.

(b) An individual assigned to a WIN institutional or work experience training component, in which no salary is paid, shall receive an allowance for necessary training related expenses. He shall also receive incentive payments at a rate not to exceed $30 a month provided he meets the requirements of the component relative to hours of participation.

(c) Individuals placed in employment, OJT, or PSE shall be authorized training related expenses for not in excess of two WIN pay periods; or until they receive their first full paycheck or the cash from a grant adjustment reflecting new work related expenses, whichever occurs first.

(d) Reasonable subsistence allowance, in addition to a training-related expense payment, shall be paid to individuals for separate maintenance when in training facilities beyond daily commuting distance from their homes for each calendar day within the training payment period during which they are participating in such training and are residing away from home.

(e) An individual shall be paid transportation allowance to a training facility located beyond commuting distance for the cost of his initial trip to the training facility and for his final trip home at the completion or other termination of such training.

(f) Individuals may be paid allowances for nonrecurring expenses as authorized by the Secretary of Labor.

(g) WIN sponsor offices may establish petty cash funds or another acceptable method to meet needs for cash for allowable expenditures for all registrants.

(h) Registrants referred to employment may receive an allowance for necessary expenses.

[46 FR 48653, Oct. 2, 1981]

§ 224.33 Relocation assistance.

The Secretary of Labor may assist certified individuals to relocate their place of residence when he determines such relocation is necessary in order to enable them to become permanently employed and self-supporting. Such assistance shall be given only to individuals who concur in the relocation and who have received a bona fide job offer at their place of relocation at wage rates which will meet at least their full need as determined by the State to which they will be relocated. Assistance under this section shall not exceed the reasonable costs of transportation for such individuals, their dependents, and their household belongings, plus such relocation allowance as the Secretary of Labor determines to be reasonable.

§ 224.34 Appropriate work and training criteria.

(a) WIN registrants may not be referred to employment which is known not to meet the criteria of this paragraph. Certified recipients shall accept assignment to employment, WIN training or employment-related activities, as determined a appropriate by the WIN sponsor or face deregistration action. The following standards must be met before any such individuals can be required to accept a work or training assignment including PSE and OJT:

(1) All assignments for those in WIN training shall be within the scope of an individual's employability plan. This plan may be modified to reflect changed employment conditions;

(2) The job or training assignment must be related to the capability of the individual to perform the task on a regular basis. Any claim of adverse effect on physical or mental health shall be based on an adequate medical testimony from a physician or licensed or certified psychologist indicating that participation would impair the individual's physical or mental health;

(3) The total daily commuting time to and from home to the work or training site to which the individual is assigned shall not normally exceed 2 hours, not including the transporting of a child to and from a child care facility, unless a longer commuting distance and time is generally accepted in the community, in which case the round trip commuting time shall not exceed the generally accepted community standards;

(4) When child care is required it must meet the standards specified in 45 CFR 228.42 and must be available during the hours the individual is engaged in a WIN component or manpower activity plus any additional necessary commuting time;

(5) The work or training site to which the individual is assigned must not be in violation of applicable federal, State and local health and safety standards;

(6) Assignments shall not be made which are discriminatory in terms of age, sex, race, creed, color, or national origin;

(7) The individual shall not be referred to work or training unless supportive and manpower services necessary for participation are available, even in cases where the State WIN plan does not specifically provide for the needed services. The cessation or withdrawal of such necessary services while the individual is in a WIN component shall constitute good cause for refusal to participate.

(b) The determination of "appropriate work" shall be made at the local project level. The following criteria shall be applied in addition to the above, in determining "appropriate work":

(1) Appropriate work may be temporary, permanent, full-time, part-time or seasonal work if such work meets the other work standards of this section;

(2) When an income disregard is available, the wage shall meet or exceed the Federal or State minimum wage law, whichever is applicable, or if such laws are not applicable, the wage shall not be substantially less favorable than the wage normally paid for similar work in that labor market but in no event shall it be less than three-fourths of the minimum wage rate set forth in section 6(a)(1) of the Fair Labor Standards Act;

(3) When, as a result of becoming employed, no income disregard is available to the individual, the wage, less mandatory payroll deductions and a reasonable allowance for necessary employment related expenses, shall provide an income equal to or exceeding the family's AFDC cash benefits. The wage shall in no case be less than that required by any applicable minimum wage law;

(4) The daily hours of work and the weekly hours of work shall not exceed those customary to the occupation; and

(5) No individual shall be required to accept employment if:

(i) The position offered is vacant due to a strike, lockout, or other bona fide labor dispute;

(ii) The individual would be required to work for an employer contrary to the conditions of his existing membership in the union governing that occupation. However, employment not governed by the rules of a union in which he has membership may be deemed appropriate;

(iii) The job offered would interrupt a program in progress under an approved employability plan leading to self-support or to the resumption of his regular job within a short period of time. This does not, however, preclude temporary employment during the interval prior to his re-employment in his regular job.

(c) In addition to meeting the criteria in paragraph (a) of this section, for training to be appropriate, the quality of the training must meet local employer's requirements so that the individual will be in a competitive position within the local labor market. The training must also be likely to lead to employment which will meet the appropriate work criteria.

[41 FR 47688, Oct. 29, 1976, as amended at 46 FR 48653, Oct. 2, 1981]

§ 224.35 Period of participation.

(a) The duration of institutional training established pursuant to section 432(b)(2) of the Act shall average no more than six months with a maximum duration of one year for any individual.

(b) Participation in the work experience component shall not exceed 13 weeks for any individual.

(c) The RCC may, for good cause, allow an exception to the limitations in paragraph (a) of this section.

§ 224.36 Nondiscrimination.

(a) No person in the United States shall, on the grounds of age, race, creed, color, sex, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance under these regulations.

(b) Grievances involving discrimination under paragraph (a) of this section shall be processed according to equal opportunity provisions established by DOL and DHHS and, to the extent applicable, in compliance with Title VI of the Civil Rights Act of 1964 (78 Stat. 252) and the regulations issued thereunder at 29 CFR Part 31 (DOL) and 45 CFR Part 80 (DHHS).

Subpart E—The WIN Components and Activities

§ 224.40 Public service employment (PSE).

(a) PSE consists of WIN subsidized jobs in the public and private nonprofit sectors. All PSE jobs must meet the criteria for appropriate work, established by § 224.34, and must be jobs which would not otherwise be performed by regular employees. The PSE component provides transitional employment intended to move individuals from AFDC into unsubsidized jobs.

(b) All certified registrants for whom appropriate unsubsidized employment cannot be found are eligible for placement in PSE.

(c) An eligible employer may be:

(1) Any unit of State or local government;

(2) Any public agency or institution which is a State or local government subdivision;

(3) An Indian tribe or combination of tribes on a Federal or State reservation; or

(4) Any private nonprofit organization established to serve a public purpose.

(d) For the purpose of AFDC benefits, PSE participants are considered to be employed. However, PSE participants shall not be deregistered from WIN until they complete the scheduled PSE contract period and enter unsubsidized employment. PSE participants are not eligible to receive either a WIN incentive payment or the $30 plus ⅓ disregard provided by section 402(a)(8) of the Act.

(e) Individuals shall not be assigned to a PSE job if this will result in the displacement of already employed full-time workers.

§ 224.41 Employment-related activities (EA).

(a) Each State WIN sponsor shall establish a program of employment-related activities in each WIN site to assist registrants, who are either AFDC applicants or recipients, to obtain employment. The State WIN sponsor shall develop standards of participation taking into account local conditions, including, but not limited to, geographic factors, availability of public transportation, and local labor market characteristics. These standards of participation shall be included in the State WIN plan.

(b) Employment-related activities shall provide employment search. Included may be group job seeking, job development, exposure to labor market information, referrals, and job placement, to assist individuals in obtaining unsubsidized employment.

(c) Participation in required employment search may not exceed a total of 40 work days in any calendar year for any individual.

(d) Assignment of registrants to employment-related activities shall occur only after appraisal and the development of an employability plan. Recipients must be certified prior to participation. AFDC applicants may be certified, but lacking certification must be provided any supportive services necessary to permit effective participation.

[46 FR 48653, Oct. 2, 1981]

§ 224.42 On-the-job-training (OJT).

(a) OJT is an employment opportunity which includes training. Under this component, a certified registrant is hired by a private or public employer and provided training which is subsidized under contract between the employer and the WIN sponsor. Employers are encouraged to provide increased supervision and training through contracts with the WIN sponsor, pursuant to which the WIN sponsor will reimburse the employer for the extraordinary costs of such training and supervision.

(b) For the purpose of AFDC benefits, OJT participants are considered to be employed. However, OJT participants shall not be deregistered from WIN until they complete the scheduled OJT contract period as they are still an active participant in the WIN program during such period.

§ 224.43 Institutional and other work experience training.

(a) Institutional training is a component involving vocational or other classroom training conducted by an instructor in a non-worksite setting.

(b) A work experience component is to provide a clearly defined, well-supervised, assignment with a public or private nonprofit employer in which an individual has the opportunity to develop basic work habits, to practice skills learned in classroom training, and to demonstrate skills to a prospective employer.

§ 224.44 WIN individuals suspended to other employment or training programs.

Certified individuals referred to other eligible Federal or State funded employment or training programs, and meeting all the eligibility requirements under those programs, shall be temporarily suspended from the WIN program. Such individuals shall normally be compensated in accordance with and through the provisions of those programs. However, when such compensation is not available or would be disadvantageous to the individual, he may accept regular WIN benefits instead. Notwithstanding such suspension, necessary supportive and manpower services which are not provided under the other program, but which are necessary to permit the individual to continue in the program, will be provided or arranged for by the SAU and the WIN sponsor in accordance with the time limits set forth in this part.

§ 224.45 Non-Federal employee status.

An individual in a WIN component shall not be deemed an employee of the Federal Government, and shall not be subject to the provisions of laws relating to Federal employees, including those relating to hours of work, rates of compensation, leave, unemployment compensation, and Federal employee benefits.

Subpart F—Deregistration and Sanctions

§ 224.50 Deregistration.

(a) All deregistrations shall be performed by the WIN sponsor.

(b) A deregistration is necessary when an individual is held to have refused to participate without good cause; an incorrect non-exemption determination has been made; or an individual becomes exempt. Deregistration is also necessary when an individual becomes ineligible for AFDC except in the case where he is participating in a component or is employed and receiving WIN-funded supportive services.

(c) The welfare agency shall notify the WIN sponsor of any change which will affect an AFDC recipient's welfare or exemption status in such a way as to warrant deregistration.

(d) Except in those cases where the WIN sponsor has been notified that an AFDC grant has been discontinued for reasons involving other than WIN program issues the WIN sponsor shall notify the IMU of all deregistrations.

(e) Any WIN recipient, except a volunteer, who is determined to have failed or refused without good cause to appear for appraisal; or any certified WIN recipient, except a volunteer, who has failed or refused to participate in the WIN program without good cause shall be deregistered from WIN and removed from the AFDC grant for failure to participate Any individual who without good cause terminates or refuses to accept employment or reduces earnings shall be deregistered and removed from the AFDC grant.

(f) Volunteers who withdraw from the WIN program shall be deregistered.

(g) Volunteers who are found to refuse to participate after notice and an adverse hearing decision, if a hearing is requested, shall be deregistered.

(h) The sanction in § 224.51 of this part shall become effective on the first day of the first payment-month that the sanctioned individual's needs are removed from the AFDC grant.

[41 FR 47688, Oct. 29, 1976, as amended at 46 FR 48653, Oct. 2, 1981]

§ 224.51 Sanctions.

A State plan under Title IV-A of the Act shall provide that:

(a) When an AFDC recipient, who is a mandatory registrant in the WIN program, has been found to have failed or refused without good cause to participate in the program or has terminated employment, or has refused to accept employment or reduced earnings without good cause, the following sanctions shall apply:

(1) For the first such occurrence the individual shall be deregistered for three payment-months.

(2) For the second and subsequent occurrences, the individual shall be deregistered for six payment-months.

(b) During the sanction period:

(1) If the individual is a caretaker relative receiving AFDC benefits, the State will not take into account his or her needs in determining the family's need for assistance. Payments for remaining members of the assistance unit will be in the form of protective or vendor payments except that, if after making reasonable efforts, the State agency is unable to locate an appropriate individual to whom protective payments can be made, the State may continue to make payments on behalf of the remaining members of the assistance unit to the sanctioned care taker relative.

(2) If the individual is the only dependent child in the family, the State will deny assistance for the family.

(3) If the individual is one of several dependent children in the family, the State will deny assistance for the child and will not take into account the child's needs in determining the family's need for assistance.

(c) When the State finds that an AFDC recipient who is a voluntary registrant has failed or refused to participate in the WIN program without good cause, the State will deregister the individual for three or six payment-months depending on whether this was the first or a subsequent deregistration for failure or refusal to participate. However, the individual's AFDC grant shall not be affected.

(d) An individual may manifest failure or refusal to participate in the WIN program or may manifest termination of employment or may refuse to accept employment or reduction in earnings either by an overt act (express) or by a de facto action.

(1) An overt (express) refusal is a written or oral statement by an individual that he or she will not participate in the WIN program.

(2) A de facto refusal is any current act or pattern of behavior consisting of a series of current events from which failure or refusal to participate can be implied. Where the failure or refusal to participate or termination of employment, or refusal to accept employment, or reduction in earnings is implied, the WIN sponsor shall send a notice setting an appointment for the individual to come to the WIN office and discuss the act or pattern of behavior in question. The notice shall explain the reasons for the appointment and the consequences of failure to keep the appointment.

(e) In the event a registrant is referred back to the IMU as having good cause for not continuing on a training plan or a job, the IMU shall promptly restore the assistance payment to the individual or make other necessary payment adjustments.

[46 FR 48654, Oct. 2, 1981, as amended at 50 FR 6166, Feb. 14, 1985; 51 FR 9440 and 9441, Mar. 19, 1986]

Subpart G—The WIN Adjudication System

§ 224.60 Disputes regarding WIN registrations.

(a) The welfare agency shall provide an opportunity for a hearing in the case of a disputed registration determination in which the AFDC applicant claims that he is exempt from WIN by the statutory criteria. Such an applicant shall be considered as exempt until his status is finally determined.

(b) A welfare hearing officer shall conduct welfare hearings under this section, pursuant to the procedures prescribed in § 205.10 of this chapter. Where the local WIN sponsor becomes involved in the determination of a disputed registration, a representative of the local WIN sponsor shall appear as a party at the hearing.

§ 224.61 Rules and procedures.

(a) The State WIN plan shall include rules and procedures applicable to both certified and uncertified registrants, governing participation, attendance, conduct, disputes, notice and opportunity for a fair hearing and any State appellate review.

(b) The plan shall specify that the hearing officer shall be an individual who was not involved in the original determination. The plan shall also designate the parties to the hearing.

§ 224.62 Complaints and grievances.

(a) Initially, written complaints and grievances shall be handled informally outside of the WIN adjudication system. They shall be processed at the local project level within the time frame provided under § 224.61(a). At that time, an individual who is not satisfied with the disposition of his complaint may initiate a formal protest at the local project level which then will be processed through the formal WIN adjudication system.

(b) Written records of all disputes arising within the WIN program shall be maintained by the WIN sponsor. The date appearing on such records shall be controlling in determining the timeliness of subsequent steps in the WIN adjudication system.

§ 224.63 Requirement of conciliation and notice.

(a) The WIN staff must exhaust efforts toward conciliatory resolution of disputes between the WIN staff and the registrant before the WIN staff issues a "Notice of Intended Deregistration." This conciliation effort shall begin as soon as possible, but no later than 10 days following the date of failure or refusal to participate as determined under § 224.51(d) of this part, and may continue for a period not to exceed 30 days. However, either the WIN staff, or the registrant upon written request, *may* terminate this period sooner when either believes that the dispute cannot be resolved by conciliation. The WIN staff shall advise the registrant of the right to terminate the conciliation effort and, where necessary, assist in preparing the written statement.

(b) Within two working days after the WIN staff or the registrant terminates the conciliation period without resolution of the matter, the WIN staff shall mail to the registrant by registered mail a "Notice of Intended Deregistration." This notice must include:

(1) A detailed explanation of the reason for the action and the consequence of refusal or failure to cooperate in a WIN prescribed program without good cause;

(2) Notification of the registrant's right to a hearing if the registrant believes that the proposed action is incorrect, or the length of the sanction period is incorrect, provided a request for a hearing is filed as prescribed in § 224.64 of this part.

(3) Notice that the proposed action will be implemented if a hearing request is not received within the prescribed time;

(4) Instructions and required forms for requesting a hearing;

(5) An offer to assist with preparation of the hearing request;

(6) Notice that he may be represented at the hearing by counsel or other authorized representative appointed by him and that he and his representative will have the opportunity to confront and cross-examine opposing witnesses;

(7) Notice that he will be permitted to present material evidence and testimony at the hearing that is not already in the record.

(c) When written notification is mailed to the individual, the WIN sponsor shall also inform him of the intended action personally or by telephone, if possible.

(d) The requirements of this section do not apply to an individual who:

(1) Has successfully entered employment and is regularly employed;

(2) Is deregistered as exempt; or

(3) Is deregistered as a result of becoming ineligible for welfare.

(Approved by the Office of Management and Budget under control number 1205-0175)

[41 FR 47688, Oct. 29, 1976, as amended at 45 FR 27422, Apr. 22, 1980; 46 FR 48654, Oct. 2, 1981; 51 FR 9441, Mar. 19, 1986]

§ 224.64 Request for hearing.

(a) An individual who believes the intended action is incorrect may request a hearing before a hearing officer within 10 days after mailing of Notice of Intended Deregistration. The request for a hearing may be made either orally or in writing by the individual or his authorized representative to the WIN sponsor. Where the request is oral, the WIN sponsor shall prepare the required forms on behalf of the individual and obtain the individual's signature on the forms.

(b) Hearing procedures shall be made available to individuals requesting hearings in advance of such hearings.

§ 224.65 Issues subject to a hearing.

(a) Under the WIN adjudication system a hearing officer will hear and decide WIN program issues arising subsequent to registration by uncertified and certified registrants. The issues for which a hearing may be requested include, but are not limited to, a registrant's failure or refusal to appear for appraisal or for assignment to a WIN component; unresolved WIN grievances; a registrant's failure or refusal without good cause to accept employment or otherwise participate in the WIN program; and the WIN staff determination of the length of the sanction period.

(b) After reasonable attempts have been made at the local level to resolve disputes arising from work, or training assignment under WIN, the designated activity may be accepted without prejudicing the individual's right to protest such assignment. Such protest shall be handled through the WIN adjudication system in the same manner as if the registrant had, in fact, refused to participate in the WIN program. In such an instance, a registrant who fails to accept an adverse decision pursuant to § 224.68(a)(5) shall have no further recourse to a hearing on the issue before a hearing officer but may appeal the decision pursuant to § 224.69.

[41 FR 47688, Oct. 29, 1976, as amended at 45 FR 27423, Apr. 22, 1980]

§ 224.66 Hearing procedures.

(a) Upon receipt of a written request for a hearing, a Notice of Scheduled Hearing shall be mailed to the individual and other parties within 10 days. Such notice shall indicate the date, time, and place of the hearing, the issues to be considered, and the hearing procedures that will be followed. Hearings shall be scheduled no earlier than 10 days, or later than 30 days, following the mailing of the hearing notice.

(b) The hearing officer may reschedule a hearing upon request of the individual, his representative, or other party.

(c) An individual or his representative may withdraw the request for a hearing in writing before the hearing.

(d) The WIN staff or its legal representative shall have primary responsibility for presenting the case before the hearing officer.

§ 224.67 Conduct of WIN hearings.

(a) The hearing officer shall:

(1) Regulate the course of the hearing;

(2) Issue subpoenas authorized by State law;

(3) Assure that all relevant issues are considered, including the timeliness of the hearing request;

(4) Rule on the introduction of new and relevant evidence and testimony;

(5) Take any other action consistent with due process, necessary to insure an orderly hearing.

(b) The testimony at the hearing shall be recorded. It shall be transcribed only when necessary for review by an appellate body.

(c) The registrant or his representative, and the designated WIN sponsor and SAU shall be afforded the opportunity to present, examine, and cross-examine witnesses.

(d) The hearing officer may elicit testimony from witnesses, but shall not act as advocate for any party.

(e) The hearing officer shall receive, and make part of the record documentary evidence offered by any party and accepted at the hearing. Copies thereof shall be made available to other interested parties upon request.

(f) The case record, or any portion thereof, shall be available for inspection and copying by any party at, prior to, or subsequent to the hearing upon request. Special procedures may be used for disclosure of medical and psychological records such as disclosure to a physician designated by the individual.

(g) The hearing officer shall, if feasible, resolve the dispute by conciliation at any time prior to the conclusion of the hearing.

§ 224.68 Decisions of the hearing officer.

(a) The hearing officer may rule:

(1) That the individual has failed to appear for appraisal without good cause or has failed or refused to participate without good cause, and that appropriate deregistration shall be initiated;

(2) That good cause has been shown for failure or refusal to participate and the individual should be retained in the program;

(3) That the request for a hearing is dismissed because:

(i) It was filed untimely without good cause;

(ii) It has been withdrawn in writing;

(iii) The individual failed to appear at the hearing without good cause; or

(iv) Reasonable cause exists to believe that the request has been abandoned or that repeated requests for rescheduling are arbitrary and for the purpose of unduly delaying or avoiding a hearing, in which case the welfare agency may initiate necessary action to impose appropriate sanctions;

(4) That the individual was appropriately or inappropriately assigned; or

(5) That the length of the period during which the registrant failed or refused to participate was not correctly determined by the WIN staff.

(6) Whether following conclusion of the sanction period, the WIN staff correctly refused to reregister the individual for cause.

(b) The hearing officer may render such other decisions as are appropriate to the issue or issues before him or her for resolution. However, a hearing officer must not consider the validity or constitutionality of either the Act or the regulations in this part.

(c) Based on the entire record including any evidence and oral testimony provided at the hearing the hearing officer shall prepare a written decision. Within 10 working days following the hearing, a copy of such decision stating his findings and conclusions of law and the reasons therefore, shall be mailed to the individual and his authorized representative, if any, the WIN sponsor, the SAU, and the RCC. Instructions for appealing an adverse decision or recommendation to the appropriate appellate body shall be attached to the copy sent to the individual and his representative.

(d) In cases involving novel questions of law or policy the hearing officer may, within 5 days after issuing his written decision, certify the case for review and decision to the State WIN appellate body or to the National Review Panel (NRP) where the State does not provide for a State WIN appellate procedure.

[41 FR 47688, Oct. 29, 1976, as amended at 45 FR 27423, Apr. 22, 1980]

§ 224.69 Appeals from hearing officer's decision.

(a) Any party who disagrees with the hearing officer's decision on the WIN issue may request a review of such decision by the appropriate State appellate body within 10 days following the date on which the hearing officer's decision is mailed. A request for appellate review of the hearing officer's decision shall not stay implementation of the decision.

(b) A State WIN appellate body shall consider and decide appeals filed within the time period prescribed by paragraph (a) of this section. Within 30 days after receipt of the request for review it shall prepare a written decision either affirming or reversing the hearing officer's decision or it may remand the case to a hearing officer for further evidence. The decision shall be based on its review of the entire hearing record and any additional written evidence submitted or obtained in connection with its consideration of the appeal. However, in no case shall new evidence be admitted if it brings into question the validity or constitutionality of the regulations in this part or of the Act. The decision shall state the findings of fact and conclusions of law and the reasons therefore. Copies of the decision shall be mailed to the individual, his authorized representative, if any, the WIN sponsor, the SAU, the RCC, and the NRP. Instructions for appealing a decision to the NRP and the rules under which the NRP considers appeals shall be attached to the individual's copy of the decision.

(c) While reviewing a case, a State WIN appellate body may consider novel questions of law or policy or certify the case within 5 days after rendering its decision to the NRP for review and decision.

(d) If a hearing officer's adverse decision is reversed on appellate review, the individual shall be paid such retroactive WIN and welfare benefits as may be applicable and, where appropriate, shall be reinstated in the program.

§ 224.70 National Review Panel (NRP).

(a) The NRP shall be composed of the DOL Chief Administrative Law Judge and other Administrative Law Judges appointed pursuant to the Administrative Procedure Act requirements and designated by the Chief Administrative Law Judge to serve as members of the panel. The panel shall be located in Washington, D.C., and shall, unless equity requires otherwise, hold its reviews in Washington.

(b) The NRP has jurisdiction to:

(1) Consider appeals where a State does not provide for a WIN appellate procedure in all cases in which a compelling reason exists, including, but not limited to, cases raising novel and or substantial issues of law or policy.

(2) Consider and decide cases wherein, in the exercise of its discretion, it has accepted certification of the cases to it by the State WIN appellate body, or in the absence of a State WIN appellate body, by the hearing officer because they involve novel questions of law or policy.

(3) Consider and decide cases which, on its own motion, it has requested from a State WIN appellate body or, in the absence of a State WIN appellate body, from the hearing officer.

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(4) At its discretion, consider and decide appeals filed by individuals, the WIN sponsor or welfare agencies from State WIN appellate body decisions.

(5) Monitor the consistency, legal sufficiency, and quality of cases handled by the hearing officer and State WIN appellate body.

(6) However, the NRP shall not have jurisdiction to examine the issue of either the validity or constitutionality of the regulations, in this Part or of the Act.

§ 224.71 Appeals to the NRP.

(a) Appeals to the NRP may be filed by any party. Such appeals shall be mailed within 10 days of the date of the written decision from which the appeal is taken.

(b) The appeal shall be in writing, shall identify reasons in support of the appeal, and be addressed to the NRP. Notice of the appeal and, where possible, copies of the appeal shall be sent by the NRP to all parties.

(c) Any party to the proceeding may respond to the appeal or comment in support of or in opposition to the appeal. The submitting party shall mail its response to the NRP within 10 days after the date of mailing of the notification that an appeal has been filed.

§ 224.72 Request for NRP to accept certifications.

(a) The State WIN appellate body, or, in the absence of a State WIN appellate body, the hearing officer may file a request that the NRP accept certification of a case.

(b) The request must contain the following:

(1) A concise statement of the novel question of law or policy which is the basis for the request to accept certification;

(2) A brief summary of the relevant facts and evidence;

(3) Pertinent rulings, conclusions, and decisions by the hearing officer or the WIN appellate body, as the case may be; and

(4) All reasons and arguments in support of the request, including citation of applicable laws and case decisions. A copy of any written decisions by the hearing officer or WIN appellate body must be attached to the request.

(c) A request for the NRP to accept certification shall be filed as follows:

(1) By the State WIN appellate body within 5 days following issuance of its written decision;

(2) In the absence of a State WIN appellate body, by the hearing officer within 5 days after issuance of his written decision;

(d) The party filing a request to the NRP to except certification of a case shall file the request with the NRP U.S. Department of Labor, Washington, DC 20036, and simultaneously mail copies to every other party including the State agency administering hearings.

(e) Any party who wishes to respond to the request or to comment thereon may file a response with the NRP in support of or in opposition to the request within 10 days following the date of mailing of a request that the NRP accept certification. A copy of the response shall be mailed to all parties to the proceeding, including the State agency administering hearings.

§ 224.73 Requests by NRP for certification.

(a) Requests by NRP for certification of a case to it shall be made in writing no later than 30 days after receipt by the NRP of a written decision by the State WIN appellate body or the hearing officer. Copies of the request shall be mailed to all parties.

(b) In all cases, any party may file briefs in support of its position. The NRP may request briefs from the parties.

(c) Briefs shall be filed within 30 days from the date mailing of the request that a case be certified. In cases where the NRP requests briefs, a different time limit may be set.

§ 224.74 Certification of the record.

Upon receipt of written notice from the NRP that an appeal has been filed, that it has accepted certification of a case, or that it has requested certification of a case, the State WIN appellate body or the hearing officer, whichever is applicable, within 30 days of mailing of the notification, shall certify and file with the NRP the record of the hearing including the transcript of the hearing; a copy of the hearing officer's decision; where appropriate, a copy of the decision of the State appellate body; and, any other papers and documents relevant to the proceedings. The State WIN appellate body or hearing officer, whichever is appropriate, shall prepare and include an index of the documents transmitted and shall mail a copy of such index to every party.

§ 224.75 Consideration by and decisions of the NRP.

(a) In considering appeals before it, the NRP may sit in panels of three members. The DOL Chief Administrative Law Judge may designate any Administrative Law Judge employed by DOL to review or hear a particular case and to submit his findings and recommendation to the NRP or any duly designated panel thereof.

(b) In considering appeals before it, the NRP, a duly designated panel thereof, or the designated Administrative Law Judge may request the parties to submit additional written statements of position, hear oral argument or hold additional hearings where necessary.

(c)(1) Any party may make application in writing for a hearing or oral presentation. Such application shall set forth the reasons in support thereof and be made within 10 days after:

(i) Mailing of notification of the filing of an appeal from the decision of a hearing officer where the State does not provide for an appellate body; or

(ii) Mailing of notification that the NRP at its discretion has accepted an appeal from the decision of a State WIN appellate body; or

(iii) Mailing of notification that the NRP has accepted certification of a case whether at its request or upon the application of a State WIN appellate body or hearing officer.

(2) If a hearing or oral argument is directed, the notice shall state the date, time, place, nature, and purpose of the hearing or oral argument. Such notice shall be mailed to all parties.

(3) At any hearing or oral argument so ordered, the NRP, or the designated Administrative Law Judge, may require or direct any party or person to appear to testify or produce evidence if such hearing or argument is deemed necessary, it shall be held at the location of the original hearing.

(4) Any party to the proceeding may appear personally or be represented by an attorney or agent.

(5) If a hearing is directed before an Administrative Law Judge, the findings and recommendations of the Administrative Law Judge to the panel shall be mailed to all parties. Any party may file with the NRP written exceptions and briefs in support thereof within 10 days of the mailing of the Administrative Law Judge's findings and recommendations and shall at the same time mail copies of such exceptions and briefs to all other parties. Any exceptions filed shall refer to specific findings and recommendations of the Administrative Law Judge.

(d) In all cases which are accepted for adjudication by the National Review Panel, the NRP shall send a copy of all relevant materials to the NCC, Solicitor of Labor and Office of General Counsel, DHHS, to afford a 30-day period for the submittal of any response deemed appropriate or requests for oral argument.

(e) The NRP shall prepare a written decision setting forth its findings, the reasons for its conclusions, and an appropriate order. The decision shall be based on the record and any additional evidence submitted to or obtained by the NRP. The decision may consist of affirmation, reversal, remand for further development of the evidence or other appropriate action. Copies of the NRP decisions including notification that the NRP has denied a request that it review a decision of a State WIN appellate body and notification that NRP has accepted certification of a case, shall be mailed to all parties and such other persons as may be appropriate.

§ 224.76 [Reserved]

§ 224.77 Subsequent WIN registration of deregistered individuals.

(a) An individual who has been deregistered on the basis of a determination that he or she failed or refused to participate without good cause in the WIN program may again register for WIN by making an application. This can be done provided the sanction period specified in § 224.51(c) of this part has elapsed and the individual has given evidence to the WIN staff of willingness to participate in the program.

(b) An individual who has been reaccepted into the WIN program after such deregistration shall have the same rights as an individual who registers for the first time.

(c) Reacceptance into the WIN program may be denied where the termination action was the result of the individual's disruptive behavior or of criminal or other activities which presented a hazard to the staff or others.

[41 FR 47688, Oct. 29, 1976, as amended at 45 FR 27423, Apr. 22, 1980]

PART 225—TRAINING AND USE OF SUBPROFESSIONALS AND VOLUNTEERS

Sec.
225.1 Definitions.
225.2 State plan requirements.
225.3 Federal financial participation.

Authority: Sec. 1102, 49 Stat. 647; 42 U.S.C. 1302.

§ 225.1 Definitions.

(a) The classification of subprofessional staff as community service aides refers to persons in a variety of positions in the planning, administration, and delivery of health, social, and rehabilitation services in which the duties of the position are composed of tasks that are an integral part of the agency's service responsibilities to people and that can be performed by persons with less than a college education, by high school graduates, or by persons with little or no formal education.

(b) "Full-time or part-time employment" means that the person is employed by the agency and his position is incorporated into the regular staffing pattern of the agency. He is paid a regular wage or salary in relation to the value of services rendered and time spent on the job.

(c) The term "Volunteer" describes a person who contributes his personal service to the community through the agency's human services program. He is not a replacement or substitute for paid staff but adds new dimensions to agency services, and symbolizes the community's concern for the agency's clientele.

(d) "Partially paid volunteers" means volunteers who are compensated for expenses incurred in the giving of services. Such payment does not reflect the value of the services rendered, or the amount of time given to the agency.

[34 FR 1319, Jan. 28, 1969]

§ 225.2 State plan requirements.

The State plan for financial assistance programs under titles I, X, XIV, or XVI (AABD) of the Social Security Act for Guam, Puerto Rico and the Virgin Islands or for child welfare services under title IV-B of the Act must:

(a) Provide for the training and effective use of subprofessional staff as community service aides through part-time or full-time employment of persons of low income and, where applicable, of recipients and for that purpose will provide for:

(1) Such methods of recruitment and selection as will offer opportunity for full-time or part-time employment of persons of low income and little or no formal education, including employment of young and middle aged adults, older persons, and the physically and mentally disabled, and in the case of a State plan for financial assistance under title I, X, XIV, or XVI (AABD), of recipients: And will provide that such subprofessional positions are subject to merit system requirements, except where special exemption is approved on the basis of a State alternative plan for recruitment and selection among the disadvantaged of persons who have the potential ability for training and job performance to help assure achievement of program objectives;

(2) An administrative staffing plan to include the range of service personnel of which subprofessional staff are an integral part;

(3) A career service plan permitting persons to enter employment at the subprofessional level and, according to their abilities, through work experience, pre-service and in-service training and educational leave with pay, progress to positions of increasing responsibility and reward;

(4) An organized training program, supervision, and supportive services for subprofessional staff; and

(5) Annual progressive expansion of the plan to assure utilization of increasing numbers of subprofessional staff as community service aides, until an appropriate number and proportion of subprofessional staff to professional staff are achieved to make maximum use of subprofessionals in program operation.

(b) Provide for the use of nonpaid or partially paid volunteers in providing services and in assisting any advisory committees established by the State agency and for that purpose provide for:

(1) A position in which rests responsibility for the development, organization, and administration of the volunteer program, and for coordination of the program with related functions;

(2) Methods of recruitment and selection which will assure participation of volunteers of all income levels in planning capacities and service provision;

(3) A program for organized training and supervision of such volunteers;

(4) Meeting the costs incident to volunteer service and assuring that no individual shall be deprived of the opportunity to serve because of the expenses involved in such service; and

(5) Annual progressive expansion of the numbers of volunteers utilized, until the volunteer program is adequate for the achievement of the agency's service goals.

[34 FR 1320, Jan. 28, 1969, as amended at 41 FR 12015, Mar. 23, 1976; 42 FR 60566, Nov. 28, 1977; 45 FR 56686, Aug. 25, 1980; 51 FR 9204, Mar. 18, 1986]

§ 225.3 Federal financial participation.

Under the State plan for financial assistance programs under titles I, X, XIV, XVI (AABD) or for child welfare services under title IV-B of the Act, Federal financial participation in expenditures for the recruitment, selection, training, and employment and other use of subprofessional staff and volunteers is available at the rates and under related conditions established for training, services, and other administrative costs under the respective titles.

[51 FR 9204, Mar. 18, 1986]

PART 232—SPECIAL PROVISIONS APPLICABLE TO TITLE IV-A OF THE SOCIAL SECURITY ACT

Sec.

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APPENDIX A—MODEL TWO-PART GOOD-CAUSE NOTICE

AUTHORITY: Sec. 1102, 49 Stat. 647; 42 U.S.C. 1302.

§ 232.1 Scope.

This part implements provisions of titles IV-A and IV-D of the Social Security Act that are applicable only to the AFDC program and establishes other administrative and fiscal requirements.

(Sec. 1102, Social Security Act, as amended, 49 Stat. 647, as amended; 42 U.S.C. 1302 and Part XXIII of Pub. L. 97-35, 95 Stat. 843)

[47 FR 5674, Feb. 5, 1982]

§ 232.2 Child support program; State plan requirements.

The State plan must specify that the State:

(a) Has in effect a plan approved under Part D of title IV of the Act; and

(b) Operates a child support program in conformity with such plan.

[40 FR 27154, June 26, 1975]

§ 232.11 Assignment of rights to support.

(a) The State plan must provide that:

(1) As a condition of eligibility for assistance, each applicant for or recipient of AFDC shall assign to the State any rights to support from any other person as such applicant or recipient may have:

(i) In his own behalf or in behalf of any other family member for whom the applicant or recipient is applying for or receiving assistance; and

(ii) Which have accrued at the time such assignment is executed.

(2) If the relative with whom a child is living fails to comply with the requirements of paragraph (a)(1), (2), or (3) of this section, such relative shall be denied eligibility without regard to other eligibility factors.

(3) If the relative with whom a child is living is found to be ineligible for assistance because of failure to comply with the requirements of paragraph (a)(1), (2), or (3) of this section, any aid for which such child is eligible (determined without regard to the needs of the ineligible relative) will be provided in the form of protective payments as described in § 234.60 of this chapter.

(4) For new applicants, the requirements of paragraph (a) of this section shall be effective August 1, 1975; and for current recipients, it shall be effective as determined by the State agency but not later than the time of the next redetermination of eligibility required by § 206.10(a)(9) of this chapter and in any event not later than February 1, 1976.

(b) An assignment by operation of State law which is substantially identical to the requirements of paragraph (a)(1) may be utilized in lieu of the assignment described in that paragraph.

(c) If there is a failure to execute an assignment pursuant to this section, the State may attempt to establish paternity and collect child support pursuant to appropriate State statutes and regulations.

[40 FR 27154, June 26, 1975, as amended at 40 FR 52376, Nov. 10, 1975]

§ 232.12 Cooperation in obtaining support.

The State plan must meet all requirements of this section.

(a) The plan shall provide that as a condition of eligibility for assistance, each applicant for or recipient of AFDC will be required to cooperate (unless good cause for refusing to do so is determined to exist in accordance with §§ 232.40 through 232.49 of this chapter) with the State in:

(1) Identifying and locating the parent of a child for whom aid is claimed;

(2) Establishing the paternity of a child born out of wedlock for whom aid is claimed;

(3) Obtaining support payments for the applicant or recipient and for a child for whom aid is claimed; and

(4) Obtaining any other payments or property due the applicant or recipient or the child.

(b) The plan shall specify that *cooperate* includes any of the following actions that are relevant to, or necessary for, the achievement of the objectives specified in paragraph (a) of this section:

(1) Appearing at an office of the State or local agency or the child support agency as necessary to provide verbal or written information, or documentary evidence, known to, possessed by, or reasonably obtainable by the applicant or recipient;

(2) Appearing as a witness at judicial or other hearings or proceedings;

(3) Providing information, or attesting to the lack of information, under penalty of perjury; and

(4) Paying to the child support agency any support payments received from the absent parent after an assignment under § 232.11 has been made. This includes support payments received in the current month and any

amounts due to the IV-D agency under the IV-D State plan provisions for recovery of retained direct support payments at 45 CFR 302.31(a)(3)(ii).

(c) The plan shall provide that, if the child support agency notifies the State or local agency of evidence of failure to cooperate, the State or local agency will act upon that information to enforce the eligibility requirements of this section.

(d) The plan shall provide that, if the caretaker relative fails to cooperate as required by paragraphs (a) and (b) of this section, the State or local agency will:

(1) Deny assistance to the caretaker relative without regard to other eligibility factors; and

(2) Provide assistance to the eligible child in the form of protective payments as described in § 234.60 of this chapter. Such assistance will be determined without regard to the needs of the caretaker relative.

[43 FR 2176, Jan. 16, 1978, as amended at 43 FR 45747, Oct. 3, 1978; 47 FR 43956, Oct. 5, 1982]

§ 232.20 Treatment of child support collections made in the Child Support Enforcement Program as income and resources in the Title IV-A Program.

(a) *Definition.* For purposes of this section, notwithstanding any other regulations in this chapter, support collections, monthly collections and support amounts for a month mean the assigned amount that the support enforcement agency collects from an absent parent or spouse on a monthly support obligation, less the disregarded sum under § 305.51(b)(1).

(b) The State plan must provide that in any case in which support payments are collected for a recipient of AFDC with respect to whom an assignment under § 232.11 is effective:

(1) Upon notification by the IV-D agency of the amount of a support collection, the IV-A agency will use such amount to review eligibility of the assistance unit under § 206.10(a)(9)(ii). This use of these amounts so collected shall not be later than the second month after the month in which the IV-A agency received a report of the monthly collections from the IV-D agency. In determining whether a support collection made by the State's IV-D agency, which represents support amounts for a month as determined pursuant to § 302.51(a) of this title, is sufficient to make the family ineligible for an assistance payment for the month to which the redetermination applies, the State will determine if such collection, when treated as if it were income, makes the family ineligible for an assistance payment. If such treatment makes the family ineligible, the IV-A agency will notify the family and the IV-D agency of the effective date of the family's ineligibility. The IV-D agency will treat the support collection that caused ineligibility in accordance with § 302.32. If such treatment does not make the family ineligible for an assistance payment, the assistance payment will be calculated without regard to such collection except that, when required under § 232.21 supplemental payments must be calculated and issued.

(2) Any payment received pursuant to § 302.51(b) (3) or (5) shall be treated as income in the month following the month to which the redetermination in paragraph (a)(1) of this section applies.

(c) From any amounts of assistance payments which are reimbursed by support collections made by the IV-D agency, the IV-A agency shall pay the Federal government its share of the collections made, after the incentive payments, if any, have been made pursuant to § 302.52 of Chapter III of this title.

(d) The State plan must provide that the IV-A agency, on behalf of the IV-D agency, will send to the family the sum disregarded under § 302.51(b)(1) within 20 calendar days of the date of initial receipt in the State of the first $50 of support collected in a month, or, if less than $50 is collected in a month, within 20 calendar days of the end of the month in which the support was collected.

(Sec. 1102, Social Security Act, as amended, 49 Stat. 647, as amended; 42 U.S.C. 1302 and Part XXIII of Pub. L. 97-35, 248, 95 Stat. 843, 96 Stat. 324)

[47 FR 5674, Feb. 5, 1982, as amended at 48 FR 28408, June 21, 1983; 49 FR 35599, Sept. 10, 1984; 51 FR 29229, Aug. 15, 1986; 54 FR 32308, Aug. 4, 1989]

§ 232.21 Computation of a supplemental payment when there is a support payment.

(a) The purpose of this section is to provide for the computation of a supplemental payment under section 402(a)(28) of the Social Security Act. When used in this section—

"Countable income" means the amount of the recipient's gross income that is used in the computation of the assistance payment after application of all disregards, including work-related expenses.

"Countable support payment" means the support collected on the current month's support obligation less an amount not in excess of the first $50 collected on that obligation. It also means the excess payments paid to the recipient by the IV-D agency under 45 CFR 302.51(b) (3) and (5).

"Disposable income" means the sum of the assistance payment, and the countable income used in determining the amount of the payment.

"Arrearages" means all collections of past due support exclusive of those made through the Federal and State income tax refund offset.

(b) The State plan must provide that, if the redetermination under § 232.20 indicates that the support payment made on the current month's support obligation would not cause ineligibility, and the State permitted recipients during July 1975 to retain countable income without an equal reduction in their assistance payment, and it currently has such a policy in effect, a supplemental payment will be computed for the current month.

(1) The supplemental payment for a month shall equal the maximum portion of the total support collected in that month which would not reduce the assistance payment if paid directly to the family. In determining this amount, the State agency will—

(i) First consider income from sources other than the support collection; and

(ii) Include in the amount of support collected the maximum amount of any arrearages paid which would not cause ineligibility if paid directly to the family.

(2) The supplemental payment will be computed as follows:

(i) The State IV-A agency determines the assistance payment which would result from treating as income to the family the largest amount of the month's child support collection, including arrearages, that will not cause ineligibility. Using that assistance payment, and using that amount of the support collection as countable income, disposable income is computed.

(ii) The State agency then determines the amount of the assistance payment for which the family would be eligible if there were no support collection. Using that assistance payment, disposable income is again computed.

(iii) The supplemental payment is the amount of disposable income as computed in step (i) less the amount of disposable income as computed in step (ii).

(iv) *Examples*:

Example 1. The State computes the assistance payment by subtracting income from the need standard and pays the deficit or a maximum by family size, whichever is less. (All figures are assumed and do not include income from any other source.)

Step (i): Treating countable support payment as income. Subtract a countable support payment of $100 from a need standard of $300. The deficit is $200. Assume the State's maximum for this family size is $150; therefore, the assistance payment would be $150. The assistance unit would have a $150 assistance payment and the $100 countable support payment for a total disposable income of $250.

Step (ii): Not treating countable support payment as income. There is no income to subtract from the need standard. Thus the assistance payment would be the maximum of $150 for this family size, which would also be the disposable income.

Step (iii): Taking the difference. The supplemental payment is the difference between the disposable income computed under steps (i) and (ii), $250 minus $150, or $100.

Example 2. The State computes the assistance payment by subtracting income from a reduced need standard and pays the deficit or a maximum by family size, whichever is less. Assume a need standard of $400, a ratable reduction of 70%, and a maximum assistance payment of $200. Also assume a $500 total child support collection for the month, $200 of which is the current month's support obligation. The State's minimum payment is $5.

Step (i): Treating countable support payments as income. Determine the largest part of the $500 child support collection which would not cause ineligibility if counted as income to the assistance unit. This would be $279 because the State's reduced need standard is $280 (70% of $400) and any amount of income over $279 would make the family ineligible. The deficit would be $1. The assistance unit would not receive an assistance payment, however, they would have the $279 support payment as disposable income. No assistance payment is made but the family remains eligible under § 233.20(a)(3)(viii) (C) and (D).

Step (ii): Not treating countable support payment as income. There is no income to subtract from the reduced need standard, thus the assistance payment would be the maximum of $200 for this family size, which would also be the disposable income.

Step (iii): Taking the difference. The supplemental payment is the difference between the disposal incomes computed under steps (i) and (ii), $280 minus $200, or $80.

(c) A supplemental payment under this section may either be added to the assistance payment for which the unit is otherwise eligible, to make a new total assistance payment for the month or be issued separately. In the examples in paragraph (b)(2)(iv) of this section, the new total assistance payments would be $250 ($150 plus $100) in Example 1, and $280 ($200 plus $80) in Example 2.

[51 FR 29229, Aug. 15, 1986]

§ 232.30 Cost of staff of special administrative units.

Cost of staff of Special Administrative Units (SAUs) providing social and supportive services under the Work Incentive (WIN) program is subject to FFP under title IV-A in all jurisdictions, pursuant to section 403(d) of the Act and 45 CFR 224.14(d). Cost of staff who solely perform other social service functions is not eligible for FFP under title IV-A, except in Puerto Rico, the Virgin Islands, and Guam.

[41 FR 37781, Sept. 8, 1976, as amended at 47 FR 17508, Apr. 23, 1982]

§ 232.40 Claiming good cause for refusing to cooperate.

(a) *Opportunity to claim good cause.* The plan shall provide that an applicant for, or recipient of, AFDC will have the opportunity to claim good cause for refusing to cooperate as required by § 232.12.

(b) *Notice to applicant or recipient.* (1) The plan shall provide that: (i) Prior to requiring cooperation under § 232.12, the State or local agency will notify the applicant or recipient of the right to claim good cause as an exception to the cooperation requirement and of all the requirements applicable to a good cause determination;

(ii) The notice will be in writing, with a copy furnished to the applicant or recipient; and

(iii) The applicant or recipient and the caseworker will acknowledge that the applicant or recipient received the notice by signing and dating a copy of the notice, which will be placed in the case record.

(2) The notice may be in two parts. If the State elects a two part notice:

(i) The first notice shall: (A) Advise the applicant or recipient of the potential benefits the child may derive from the establishment of paternity and securing support;

(B) Advise the applicant or recipient that by law, cooperation in establishing paternity and securing support is a condition of eligibility for AFDC;

(C) Advise the applicant or recipient of the sanction provided by § 232.12 for refusal to cooperate without good cause;

(D) Advise the applicant or recipient that good cause for refusal to cooperate may be claimed; and that if the State or local agency determines, in accordance with this section, that there is good cause, the applicant or recipient will be excused from the cooperation requirement; and

(E) Advise the applicant or recipient that upon request, or following a claim of good cause, the agency will provide further notice with additional details concerning good cause.

(ii) The second notice, which will be provided promptly upon request of the applicant or recipient or following a claim of good cause, shall:

(A) Indicate that the applicant or recipient must provide corroborative evidence of a good cause circumstance (as specified in § 232.43 (b) and (f)) and must, when requested, furnish sufficient information to permit the State or local agency to investigate the circumstances;

(B) Inform the applicant or recipient that upon request, the State or local agency will provide reasonable assistance in obtaining the corroborative evidence;

(C) Inform the applicant or recipient that on the basis of the corroborative evidence supplied and the agency's investigation if necessary, the State or local agency will determine whether cooperation would be against the best interests of the child for whom support would be sought;

(D) List the circumstances (as specified in § 232.42) under which cooperation may be determined to be against the best interests of the child;

(E) Inform the applicant or recipient that the State Child Support Enforcement agency may review the State or local agency's findings and basis for a good cause determination and may participate in any hearings concerning the issue of good cause; and

(F) As applicable, (see § 232.49) inform the applicant or recipient that either: The State Child Support Enforcement agency will not attempt to establish paternity and collect support in those cases where the applicant or recipient is determined to have good cause for refusing to cooperate; or the State Child Support Enforcement agency may attempt to establish paternity and collect support in those cases where the State or local agency determines that this can be done without risk to the applicant or recipient if done with out their participation.

(3) The State or local agency may, at its option, provide a single combined notice that contains all of the elements in paragraphs (b) (2) (i) and (ii) of this section.

(4) Appendix A to this Part 232 is a suggested two part notice format that meets the requirements of this section.

(c) *Requirements upon applicant or recipient.* (1) The plan shall provide that an applicant for, or recipient of, AFDC who refuses to cooperate and who claims to have good cause for refusing to cooperate has the burden of establishing the existence of a good cause circumstance. Such applicant or recipient will be required to:

(i) Specify the circumstances (see § 232.42) that the applicant or recipient believes provide sufficient good cause for not cooperating.

(ii) Corroborate the good cause circumstances in accordance with § 232.43; and

(iii) If requested, provide sufficient information (such as the putative father or absent parent's name and address, if known) to permit an investigation pursuant to § 232.43(g).

(2) The plan shall provide that if the requirements of paragraph (c)(1) of this section are not met, the State or local agency shall on that basis determine that good cause does not exist.

[43 FR 45747, Oct. 3, 1978]

§ 232.41 Determination of good cause for refusal to cooperate.

The plan shall provide that:

(a) For each applicant for or recipient of AFDC who claims to have good cause, the State or local agency will determine, in accordance with §§ 232.40, 232.42 and 232.43, whether good cause exists.

(b) The State or local agency's final determination that good cause does, or does not exist will:

(1) Be in writing;

(2) Contain the agency's findings and basis for determination; and

(3) Be entered into the AFDC case record.

(c) The State or local agency's determination of whether or not good cause exists will be made within a State established time standard that does not exceed 45 days from the day the good cause claim is made. The State or local agency may exceed this time standard only where the case record documents that the agency needs additional time because the information required to verify the claim cannot be obtained within the time standard or that the claimant did not provide corroborative evidence within the period required by § 232.43(b).

(d) If the State or local agency determines that good cause does not exist:

(1) The applicant or recipient will be so notified and afforded an opportunity to cooperate, withdraw the applica-

tion for assistance, or have the case closed; and

(2) Continued refusal to cooperate will result in imposition of the sanction provided by § 232.12.

[43 FR 45748, Oct. 3, 1978]

§ 232.42 Good cause circumstances.

(a) *Circumstances under which cooperation may be "against the best interests of the child."* The plan shall provide that the State or local agency will determine that cooperation in establishing paternity and securing support is against the best interests of the child only if:

(1) The applicant's or recipient's cooperation in establishing paternity or securing support is reasonably anticipated to result in:

(i) Physical harm to the child for whom support is to be sought;

(ii) Emotional harm to the child for whom support is to be sought;

(iii) Physical harm to the parent or caretaker relative with whom the child is living which reduces such person's capacity to care for the child adequately;

(iv) Emotional harm to the parent or caretaker relative with whom the child is living, of such nature or degree that it reduces such person's capacity to care for the child adequately; or

(2) At least one of the following circumstances exists, and the State or local agency believes that because of the existence of that circumstance, in the particular case, proceeding to establish paternity or secure support would be detrimental to the child for whom support would be sought.

(i) The child for whom support is sought was conceived as a result of incest or forcible rape;

(ii) Legal proceedings for the adoption of the child are pending before a court of competent jurisdiction; or

(iii) The applicant or recipient is currently being assisted by a public or licensed private social agency to resolve the issue of whether to keep the child or relinquish him for adoption, and the discussions have not gone on for more than 3 months.

(b) *Physical harm and emotional harm defined.* Physical harm and emotional harm must be of a serious nature in order to justify a finding of good cause under paragraph (a)(1) of this section. A finding of good cause for emotional harm may only be based upon a demonstration of an emotional impairment that substantially affects the individual's functioning.

(c) *Special considerations related to emotional harm.* The plan shall provide that, for every good cause determination which is based in whole or part upon the anticipation of emotional harm to the child, the parent or the caretaker relative, as provided for in paragraphs (a)(1) (ii) and (iv) of this section, the State or local agency will consider the following:

(1) The present emotional state of the individual subject to emotional harm;

(2) The emotional health history of the individual subject to emotional harm;

(3) Intensity and probable duration of the emotional impairment;

(4) The degree of cooperation to be required; and

(5) The extent of involvement of the child in the paternity establishment or support enforcement activity to be undertaken.

[43 FR 45748, Oct. 3, 1978]

§ 232.43 Proof of good-cause claim.

The plan shall provide that:

(a) The State or local agency will make a good-cause determination based on the corroborative evidence supplied by the applicant or recipient only after it has examined the evidence and found that it actually verifies the good-cause claim.

(b) The applicant or recipient who claims good cause must provide corroborative evidence within 20 days from the day the claim was made. In exceptional cases where the State or local agency determines the applicant or recipient requires additional time because of the difficulty of obtaining the corroborative evidence, the agency shall allow a reasonable additional period of time upon approval by supervisory personnel.

(c) A good-cause claim may be corroborated with the following types of evidence:

(1) Birth certificates or medical or law enforcement records which indi-

cate that the child was conceived as the result of incest or forcible rape;

(2) Court documents or other records which indicate that legal proceedings for adoption are pending before a court of competent jurisdiction;

(3) Court, medical, criminal, child protective services, social sevices, psychological, or law enforcement records which indicate that the putative father or absent parent might inflict physical or emotional harm on the child or caretaker relative;

(4) Medical records which indicate emotional health history and present emotional health status of the caretaker relative or the child for whom support would be sought; or, written statements from a mental health professional indicating a diagnosis or prognosis concerning the emotional health of the caretaker relative or the child for whom support would be sought;

(5) A written statement from a public or licensed private social agency that the applicant or recipient is being assisted by the agency to resolve the issue of whether to keep the child or relinquish him for adoption; and

(6) Sworn statements from individuals other than the applicant or recipient with knowledge of the circumstances which provide the basis for the good-cause claim.

(d) If after examining the corroborative evidence submitted by the applicant or recipient, the State or local agency wishes to request additional corroborative evidence which is needed to permit a good-cause determination, the agency will:

(1) Promptly notify the applicant or recipient that additional corroborative evidence is needed; and

(2) Specify the type of document which is needed.

(e) Upon request, the State or local agency will:

(1) Advise the applicant or recipient how to obtain the necessary documents; and

(2) Make a reasonable effort to obtain any specific documents which the applicant or recipient is not reasonably able to obtain without assistance.

(f) Where a claim is based on the applicant's or recipient's anticipation of physical harm as specified and defined in § 232.42 (a) and (b), and corroborative evidence is not submitted in support of the claim:

(1) The State or local agency will investigate the good-cause claim when the agency believes that:

(i) The claim is credible without corroborative evidence; and

(ii) Corroborative evidence is not available.

(2) Good cause will be found if the claimant's statement and the investigation which is conducted satisfies the agency that the applicant or recipient has good cause for refusing to cooperate.

(3) A determination that good cause exists will be reviewed and approved or disapproved by supervisory personnel and the agency's findings will be recorded in the case record.

(g) The State or local agency may further verify the good-cause claim if the applicant's or recipient's statement of the claim required by § 232.40(c)(1)(i), together with the corroborative evidence do not provide sufficient basis for making a determination. When the State or local agency determines that it is necessary, the agency may conduct an investigation of good-cause claims to determine that good cause does or does not exist.

(h) If it conducts an investigation of a good-cause claim, the State or local agency will:

(1) Contact the absent parent or putative father from whom support would be sought if such contact is determined to be necessary to establish the good-cause claim; and

(2) Prior to making such necessary contact, notify the applicant or recipient to enable the applicant or recipient to:

(i) Present additional corroborative evidence or information so that contact with the parent or putative father becomes unnecessary;

(ii) Withdraw the application for assistancse or have the case closed; or

(iii) have the good-cause claim denied.

[43 FR 45749, Oct. 3, 1978]

§ 232.44 Participation by the State IV-D Agency.

The plan shall provide that:

(a) Prior to making a final determination of good cause for refusing to cooperate, the State or local agency will:

(1) Afford the IV-D agency the opportunity to review and comment on the findings and basis for the proposed determination; and

(2) Consider any recommendation from the IV-D agency.

(b) The State or local agency will give the IV-D agency the opportunity to participate in any hearing (under § 205.10 of this chapter) that results from an applicant's or recipient's appeal of any agency action under §§ 232.40 through 232.49.

[43 FR 45749, Oct. 3, 1978]

§ 232.45 Notice to the IV-D Agency.

The plan shall provide that:

(a) If the notice, required by § 235.70 of this chapter, has previously been provided to the IV-D agency, the State or local agency will promptly report to the IV-D agency that good cause has been claimed;

(b) The State or local agency will promptly report to the IV-D agency all cases in which it has determined that there is good cause for refusal to cooperate and if applicable, its determination whether or not child support enforcement may proceed without the participation of the caretaker relative; and

(c) The State and local agency will promptly report to the IV-D agency all cases in which it has determined that there is not good cause for refusal to cooperate.

[43 FR 45749, Oct. 3, 1978]

§ 232.46 Granting or continuation of assistance.

The plan shall provide that the State or local agency will not deny, delay, or discontinue assistance pending a determination of good cause for refusal to cooperate if the applicant or recipient has complied with the requirements of §§ 232.40(c) and 232.43 to furnish corroborative evidence and information.

[43 FR 45750, Oct. 3, 1978]

§ 232.47 Periodic review of good cause determination.

The plan shall provide that the State or local agency will:

(a) Periodically review, not less frequently than at each redetermination of eligibility required by § 206.10(a)(9) of this chapter, those cases in which the agency has determined that good cause exists based on a circumstance that is subject to change; and

(b) If it determines that circumstances have changed such that good cause no longer exists, it will rescind its findings and proceed to enforce the requirements of § 232.12 of this chapter.

[43 FR 45750 Oct. 3, 1978]

§ 232.48 Record keeping in good cause.

The plan shall provide that the State will maintain records of the activities under this section that will make it possible to submit to the Department, upon request, data concerning:

(a) The total number of cases in which the applicant or recipient claimed to have good cause for refusing to cooperate;

(b) The number of cases in which the claim was made without corroborative evidence under the provisions of § 232.43(f);

(c) The total number of cases in which the applicant or recipient was found to have good cause for refusing to cooperate;

(d) The number of cases in which the applicant or recipient was found to have good cause for refusing to cooperate without corroborative evidence under the provisions of § 232.43(f);

(e) The number of cases in which the applicant or recipient was fund to have good cause for refusing to cooperate based solely on an examination of the corroborative evidence supplied by the applicant or recipient with no investigation;

(f) The number of cases where good cause was claimed by an applicant prior to receiving AFDC and the final determination that good cause did not exist was made after the applicant was determined to be eligible for AFDC;

(g) The number of cases in which the applicant or recipient was found to have good cause for refusing to cooperate but there was a determination pursuant to § 232.49 that child support enforcement may proceed without the participation of the caretaker relative; and

(h) For those cases in which good cause was found, which of the circumstances specified in § 232.42 was found to exist.

[43 FR 45750, Oct. 3, 1978]

§ 232.49 Enforcement without the caretaker's cooperation.

The State plan may provide that:

(a) If the State or local agency makes a determination that good cause exists it will also make a determination of whether or not child support enforcement could proceed without risk of harm to the child or caretaker relative if the enforcement or collection activities did not involve their participation;

(b) This determination will be in writing, contain the agency's findings and basis for determination, and be entered into the AFDC case record;

(c) If the IV-A agency excuses cooperation but determines that the IV-D agency may proceed to establish paternity or enforce support, it will notify the applicant or recipient to enable such individual to withdraw their application for assistance or have the case closed; and

(d) Prior to making a determination under this paragraph, the State or local agency will afford the IV-D agency an opportunity to review and comment on the findings and basis for the proposed determination and consider any recommendation from the IV-D agency.

[43 FR 45750, Oct. 3, 1978]

APPENDIX A—MODEL TWO-PART GOOD CAUSE NOTICE

This suggested two-part notice format meets the notice requirements of § 232.40(b)(2). The first notice should be provided prior to requiring the applicant's or recipient's cooperation. The second notice should be promptly provided if the applicant or recipient so requests or following a claim of good cause. Receipt of the notice will be acknowledged by the applicant's or recipient's and the worker's signatures. The signed copy should be placed in the AFDC case record with one copy retained by the applicant or recipient.

Before being used by a State this model should be adapted by substituting the appropriate agencies' names.

NOTICE OF REQUIREMENT TO COOPERATE AND RIGHT TO CLAIM GOOD CAUSE FOR REFUSAL TO COOPERATE IN CHILD SUPPORT ENFORCEMENT

BENEFITS OF CHILD SUPPORT ENFORCEMENT

Your cooperation in the child support enforcement process may be of value to you and your child because it might result in the following benefits:

- Finding the absent parent;
- Legally establishing your child's paternity;
- The possibility that support payments might be higher than your welfare grant; and
- The possibility that you and your children may obtain rights to future social security, veterans, or other government benefits.

WHAT IS MEANT BY COOPERATION?

The law requires you to cooperate with the welfare and child support agencies to get any support owed to you and any of the children for whom you want AFDC, unless you have good cause for not cooperating.

In cooperating with the welfare or child support agency, you may be asked to do one or more of the following things:

- Name the parent of any child applying for or receiving AFDC, and give information you have to help find the parent;
- Help determine legally who the father is if your child was born out of wedlock;
- Give help to obtain money owed to you or the children receiving AFDC; and
- Pay to the State any money which is given directly to you by the absent parent (you will continue to get your full AFDC grant from the State).

You may be required to come to the welfare office, child support office, or court to sign papers or give necessary information.

WHAT IS MEANT BY GOOD CAUSE?

You may have good cause not to cooperate in the State's efforts to collect child support. You may be excused from cooperating if you believe that cooperation would not be in the best interest of your child, and if you can provide evidence to support this claim.

IF YOU DO NOT COOPERATE AND YOU DO NOT HAVE GOOD CAUSE

- You will be ineligible for AFDC.

•Your children will still be eligible for AFDC for their own needs. Your children's grant will go to another person, called a "protective payee."

HOW AND WHEN YOU MAY CLAIM GOOD CAUSE

•If you want to claim good cause, you must tell a worker that you think you have good cause. You can do this at any time you believe you have good cause not to cooperate.

•If you claim "good cause" you must be given another notice. This second notice will explain the circumstances under which the Welfare Agency may find good cause, and the type of evidence or other information the Welfare Agency needs to decide your claim. You may also ask for this second notice to help you decide whether or not to claim good cause.

I have read this notice concerning my right to claim good cause for refusing to cooperate.

____

(Signature of applicant/recipient)

____

(Date)

I have provided the applicant/recipient with a copy of this notice.

____

(Signature of worker)

____

(Date)

SECOND NOTICE OF RIGHT TO CLAIM GOOD CAUSE FOR REFUSAL TO COOPERATE IN CHILD SUPPORT ENFORCEMENT

GOOD CAUSE CIRCUMSTANCES

You may claim to have good cause for refusing to cooperate if you believe that such cooperation would not be in the best interests of your child. The following are circumstances under which the Welfare Agency may determine that you have good cause for refusing to cooperate:

•Cooperation is anticipated to result in serious physical or emotional harm to the child;

•Cooperation is anticipated to result in physical or emotional harm to you which is so serious it reduces your ability to care for the child adequately;

•The child was born after forcible rape or incest;

•Court proceedings are going on for adoption of the child; or

•You are working with an agency helping you to decide whether to place the child for adoption.

PROVING GOOD CAUSE

It is your responsibility to:

•Provide the Welfare Agency with the evidence needed to determine whether you have good cause for refusing to cooperate (If your reason for claiming good cause is your fear of physical harm and it is impossible to obtain evidence, the Welfare Agency may still be able to make a good cause determination after an investigation of your claim.)

•Give the necessary evidence to the agency within 20 days after claiming good cause. The Welfare Agency will give you more time only if it determines that more than 20 days are required because of the difficulty in obtaining the evidence.

The Welfare Agency may:

•Decide your claim based on the evidence which you give to the agency, or

•Decide to conduct an investigation to further verify your claim. If the Welfare Agency decides an investigation is needed, you may be required to give information, such as the absent parent's name and address, to help the investigation. The agency will not contact the absent parent without first telling you.

NOTE: If you are an applicant for assistance, you will not receive your share of the grant until you have given the agency the evidence needed to support your claim, and, if requested, the information needed to permit an investigation of your claim.

EXAMPLES OF ACCEPTABLE EVIDENCE

The following are examples of acceptable kinds of evidence the Welfare Agency can use in determining if good cause exists.

If you need help in getting a copy of any of the documents, ask the Welfare Agency. The Welfare Agency will give you reasonable assistance which is needed to help you obtain the necessary documents to support your claim.

•Birth certificates, or medical or law enforcement records, which indicate that the child was conceived as the result of incest or forcible rape;

•Court documents or other records which indicate that legal proceedings for adoption are pending in court;

•Court, medical, criminal, child protective services, social services, psychological, or law enforcement records which indicate that the alleged or absent father might inflict physical or emotional harm on you or the child;

•Medical records which indicate emotional health history and present health status of you or the child for whom support would be sought; or written statements from a mental health professional indicating a diagnosis or prognosis concerning the emotional health of you or the child;

•A written statement from a public or private agency confirming that you are being assisted in resolving the issue of whether to keep or give up the child for adoption; and

•Sworn statements from individuals, including friends, neighbors, clergymen, social workers, and medical professionals who might have knowledge of the circumstances providing the basis of your good cause claim.

CHILD SUPPORT AGENCY PARTICIPATION AND ENFORCEMENT

The Child Support Enforcement Agency may review the Welfare Agency's findings and the basis for a good cause determination in your case. If you request a hearing regarding this issue of good cause for refusing to cooperate, the Child Support Enforcement Agency may participate in that hearing.

The Notice must include one of the following statements, as applicable depending on the State plan option chosen. See § 232.49.

Option 1

If you are found to have good cause for not cooperating, the Child Support Enforcement Agency may attempt to establish paternity or collect support only if the Welfare Agency determines that this can be done without risk to you or your child. This will not be done without first telling you.

Option 2

If you are found to have good cause for not cooperating, the Child Support Enforcement Agency will not attempt to establish paternity or collect support.

I have read this notice concerning my right to claim good cause for refusing to cooperate.

____

(Signature of applicant/recipient)

____

(Date)

I have provided the applicant/recipient with a copy of this notice.

____

(Signature of worker)

____

(Date)

[43 FR 45750, Oct. 3, 1978]

PART 233—COVERAGE AND CONDITIONS OF ELIGIBILITY IN FINANCIAL ASSISTANCE PROGRAMS

Sec.

233.10 General provisions regarding coverage and eligibility.
233.20 Need and amount of assistance.
233.21 Budgeting methods for OA, AB APTD, and AABD.
233.22 Determining eligibility under prospective budgeting.
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233.24 Retrospective budgeting; determining eligibility and computing the assistance payment in the initial one or two months.
233.25 Retrospective budgeting; computing the assistance payment after the initial one or two months.
233.26 Retrospective budgeting; determining eligibility after the initial one or two months.
233.27 Supplemental payments under retrospective budgeting.
233.28 Monthly reporting.
233.29 How monthly reports are treated and what notices are required.
233.31 Budgeting methods for AFDC.
233.32 Payment and budget months (AFDC).
233.33 Determining eligibility prospectively for all payment months (AFDC).
233.34 Computing the assistance payment in the initial one or two months (AFDC).
233.35 Computing the assistance payment under retrospective budgeting after the initial one or two months (AFDC).
233.36 Monthly reporting (AFDC).
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233.37 How monthly reports are treated and what notices are required (AFDC).
233.39 Age.
233.40 Residence.
233.50 Citizenship and alienage.
233.51 Eligibility of sponsored aliens.
233.52 Overpayment to aliens.
233.53 Support and maintenance assistance (including home energy assistance) in AFDC.
233.60 Institutional status.
233.70 Blindness.

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233.80 Disability.
233.90 Factors specific to AFDC.
233.100 Dependent children of unemployed parents.
233.106 Denial of AFDC benefits to strikers.
233.110 Foster care maintenance and adoption assistance.
233.120 Emergency assistance to needy families with children.
233.145 Expiration of medical assistance programs under titles I, IV-A X, XIV and XVI of the Social Security Act.

AUTHORITY: Secs. 1, 402, 406, 407, 1002, 1102, 1402, and 1602, Social Security Act (42 U.S.C. 301, 602, 606, 607, 1202, 1302, 1602, and 1382 note); and sec. 6, Pub. L. 94-114, 89 Stat. 579 and Part XXIII of Pub. L. 97-35, 95 Stat. 843, and Pub. L. 97-248, 96 Stat. 324, and Pub. L. 99-603, 100 Stat. 3359, sec. 221, Pub. L. 98-181, as amended by sec. 102, Pub. L. 98-479 (42 U.S.C. 602 note) and sec. 202, Pub. L. 100-485, 102 Stat. 2377.

§ 233.10 General provisions regarding coverage and eligibility.

(a) *State plan requirements.* A State plan under title I, IV—A, X, XIV, or XVI, of the Social Security Act must:

(1) Specify the groups of individuals, based on reasonable classifications, that will be included in the program, and all the conditions of eligibility that must be met by the individuals in the groups. The groups selected for inclusion in the plan and the eligibility conditions imposed must not exclude individuals or groups on an arbitrary or unreasonable basis, and must not result in inequitable treatment of individuals or groups in the light of the provisions and purposes of the public assistance titles of the Social Security Act. Under this requirement:

(i) A State shall impose each condition of eligibility required by the Social Security Act; and

(ii) A State may:

(A) Provide more limited public assistance coverage than that provided by the Act only where the Social Security Act or its legislative history authorizes more limited coverage;

(B) Impose conditions upon applicants for and recipients of public assistance which, if not satisfied, result in the denial or termination of public assistance, if such conditions assist the State in the efficient administration of its public assistance programs, or further an independent State welfare policy, and are not inconsistent with the provisions and purposes of the Social Security Act.

(iii) There must be clarity as to what groups are included in the plan, and which are within, and which are outside, the scope of Federal financial participation.

(iv) Eligibility conditions must be applied on a consistent and equitable basis throughout the State.

(v) A plan under title XVI must have the same eligibility conditions and other requirements for the aged, blind, and disabled, except as otherwise specifically required or permitted by the Act.

(vi) Eligibility conditions or agency procedures or methods must not preclude the opportunity for an individual to apply and obtain a determination of eligibility or ineligibility.

(vii) Methods of determining eligibility must be consistent with the objective of assisting all eligible persons to qualify.

(2) Provide that the State agency will establish methods for identifying the expenditures for assistance for any groups included in the plan for whom Federal financial participation in assistance may not be claimed.

(3) In addition, a State plan under title IV-A, X, XIV, or XVI of the Act, must: Provided that no aid or assistance will be provided under the plan to an individual with respect to a period for which he is receiving aid or assistance under a State plan approved under any other of such titles or under title I of the Act.

(b) *Federal financial participation.* (1) The provisions which govern Federal financial participation in assistance payments are set forth in the Social Security Act, throughout this chapter, and in other policy issuances of the Secretary. Where indicated, State plan provisions are prerequisite to Federal financial participation with respect to the applicable group and payments. State plan provisions on need, the amount of assistance, and eligibility determine the limits of Federal financial participation. Federal financial participation is excluded from assistance payments in which the State refuses to participate because of the failure of a local authority to apply such State plan provisions.

(2) The following is a summary statement regarding the groups for whom Federal financial participation is available. (More detailed information is given elsewhere.)

(i) OAA—for needy individuals under the plan who are 65 years of age or older.

(ii) AFDC—for:

(*a*) Needy children under the plan who are:

(*1*) Under the age of 18, or age 18 if a full-time student in a secondary school, or in the equivalent level of vocational or technical training, and reasonably expected to complete the program before reaching age 19;

(*2*) Deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, or unemployment of a principal earner, and

(*3*) Living in the home of a parent or of certain relatives specified in the Act.

(*b*) The parent or other caretaker relative of a dependent child and, in certain situations, the parent's spouse.

(iii) AB—for needy individual's under the plan who are blind.

(iv) APTD—for needy individuals under the plan who are 18 years of age or older and permanently and totally disabled.

(v) AABD—for needy individuals under the plan who are aged, blind, or 18 years of age or older and permanently and totally disabled.

(3) Federal financial participation is available in assistance payments made for the entire month in accordance with the State plan if the individual was eligible for a portion of the month, provided that the individual was eligible on the date that the payment was made; except that where it has been determined that the State agency had previously denied assistance to which the individual was entitled, Federal financial participation will be provided in any corrective payment regardless of whether the individual is eligible on the date that the corrective payment is made.

(4) Federal financial participation is available in assistance payments which are continued in accordance with the State plan, for a temporary period during which the effects of an eligibility condition are being overcome, e.g., blindness in AB, disability in APTD, physical or mental incapacity, continued absence of a parent, or unemployment of a principal earner in AFDC.

(5) Where changed circumstances or a hearing decision makes the individual ineligible for any assistance, or eligible for a smaller amount of assistance than was actually paid, Federal financial participation is available in excess payments to such individuals, for not more than one month following the month in which the circumstances changed or the hearing decision was rendered. Federal financial participation is available where assistance is required to be continued unadjusted because a hearing has been requested.

[36 FR 3866, Feb. 27, 1971, as amended at 38 FR 8744, Apr. 6, 1973; 39 FR 26912, July 24, 1974; 40 FR 32958, Aug. 5, 1975; 47 FR 5674, Feb. 5, 1982; 47 FR 47828, Oct. 28, 1982; 51 FR 9204, Mar. 18, 1986]

§ 233.20 Need and amount of assistance.

(a) *Requirements for State Plans.* A State Plan for OAA, AFDC, AB, APTD or AABD must, as specified below:

(1) *General.* (i) Provide that the determination of need and amount of assistance for all applicants and recipients will be made on an objective and equitable basis and all types of income will be taken into consideration in the same way except where otherwise specifically authorized by Federal statute and

(ii) Provide that individuals receiving SSI benefits under title XVI, for the period for which such benefits are received, shall not be included in the AFDC assistance unit for purposes of determining need and the amount of the assistance payment. Under this requirement, "individuals receiving SSI benefits under title XVI" includes individuals receiving mandatory or optional State supplementary payments under section 1616(a) of the Act or under section 212 of Pub. L. 93-66.

(2) *Standards of assistance.* (i) Specify a statewide standard, expressed in

money amounts, to be used in determining (*a*) the need of applicants and recipients and (*b*) the amount of the assistance payment.

(ii) In the AFDC plan, provide that by July 1, 1969, the State's standard of assistance for the AFDC program will have been adjusted to reflect fully changes in living costs since such standards were established, and any maximums that the State imposes on the amount of aid paid to families will have been proportionately adjusted. In such adjustment a consolidation of the standard (i.e., combining of items) may not result in a reduction in the content of the standard. In the event the State is not able to meet need in full under the adjusted standard, the State may make ratable reductions in accordance with paragraph (a)(3)(viii) of this section. Nevertheless, if a State maintains a system of dollar maximums these maximums must be proportionately adjusted in relation to the updated standards.

(iii) Provide that the standard will be uniformly applied throughout the State except as provided under § 239.54.

(iv) Include the method used in determining need and the amount of the assistance payment. For AFDC, the method must provide for rounding down to the next lower whole dollar when the result of determining the standard of need or the payment amount is not a whole dollar. Proration under § 206.10(a)(6)(i)(D) to determine the amount of payment for the month of application must occur before rounding to determine the payment amount for that month.

(v) If the State IV-A agency includes special need items in its standard:

(A) Describe those that will be recognized and the circumstances under which they will be included, and

(B) Provide that they will be considered for all applicants and recipients requiring them; except that:

(*1*) Under AFDC, work expenses and child care (or care of incapacitated adults living in the same home and receiving AFDC) resulting from employment or participation in either a CWEP or an employment search program cannot be special needs, and

(*2*) In a State which has a JOBS program under Part 250, child care, transportation, work-related expenses, other work-related supportive services, and the costs of education (including tuition, books, and fees) resulting from participation in JOBS (including participation pursuant to §§ 250.46, 250.47, and 250.48) or any other education or training activity cannot be special needs.

(vi) For OAA, AB, APTD, or AABD, if the State chooses to establish the need of the individual on a basis that recognizes, as essential to his well-being, the presence in the home of other needy individuals, (*a*) specify the persons whose needs will be included in the individual's need, and (*b*) provide that the decision as to whether any individual will be recognized as essential to the recipient's well-being shall rest both with the recipient, and be supported and concurred in by the agency supervisory staff—a person of a higher position or authority than the first line caseworker or income maintenance intake employee.

(vii) For AFDC, if the State chooses to establish the need of the individual on a basis that recognizes, as essential to his/her basic well-being, the presence in the home of other needy individuals, (*a*) specify the persons whose needs will be included in the individual's need, but limited to those individuals who regularly provide at least one of the following benefits or services: (*1*) child care which enables a caretaker relative to work on a full-time basis outside the home, (*2*) care for an incapacitated family member in the home, (*3*) child care that enables a caretaker relative to receive training on a full-time basis (*4*) child care that enables a caretaker relative to attend high school (or General Education Development (GED) classes) on a full-time basis, (*5*) child care for a period not to exceed two months that enables a caretaker relative to participate in Employment Search or another AFDC work program; and (*b*) provide that the decision as to whether any individual will be recognized as essential to the recipient's well-being shall rest both with the recipient, and be supported and concurred in by the agency supervisory staff—a person of a higher position or authority than the first line caseworker or income maintenance intake employee. A person will be considered incapacitated for purposes of the previous sentence when he has a physical or mental defect, illness, or impairment. The incapacity shall be supported by medical evidence and/or recorded testimony of a licensed medical health care professional, and must be of such a debilitating nature as to reduce substantially or eliminate his/her ability to support or care for himself/herself and be expected to last for a period of at least thirty (30) days. A finding of eligibility for OASDI or SSI benefits, based on disability or blindness, is acceptable proof of incapacity. The definition of the term "full-time," applicable to both minor and adult caretaker relatives, as used above in paragraph (a)(2)(vii)(*a*) (*1*), (*3*), and (*4*) of this section shall be consistent with the definition used by the State for purposes of the earned income disregards at § 233.20(a)(11).

(viii) Provide that the money amount of any need item included in the standard will not be prorated or otherwise reduced solely because of the presence in the household of a non-legally responsible individual; and the agency will not assume any contribution from such individual for the support of the assistance unit except as provided in paragraphs (a)(3)(xiv) and (a)(5) of this section and § 233.51 of this part.

(ix) For AFDC, provide that a State shall consider utility payments made in lieu of any direct rental payment to a landlord or public housing agency to be shelter costs for applicants or recipients living in housing assisted under the U.S. Housing Act of 1937, as amended, and section 236 of the National Housing Act. The amount considered as a shelter payment shall not exceed the total amount the applicant or recipient is expected to contribute for the cost of housing as determined by HUD. "Utility payments" means only those payments made directly to a utility company or supplier which are for gas, electricity, water, heating fuel, sewerage systems, and trash and garbage collection. Utility payments are made "in lieu of any direct rental payment to a landlord or public housing agency" when, and only when, the AFDC family pays its entire required contribution at HUD's direction to one or more utility companies and does not make any direct payment to the landlord or the public housing agency. Housing covered by "the U.S. Housing Act of 1937, as amended, and section 236 of the National Housing Act" means Department of Housing and Urban Development assisted housing which includes Indian and public housing, section 8 new and existing rental housing, and section 236 rental housing.

(3) *Income and resources.* (i) (A) *OAA, AB, APTD, AABD,* Specify the amount and types of real and personal property, including liquid assets, that may be reserved, i.e., retained to meet the current and future needs while assistance is received on a continuing basis. In addition to the home, personal effects, automobile and income producing property allowed by the agency, the amount of real and personal property, including liquid assets, that can be reserved for each individual recipient shall not be in excess of two thousand dollars. Policies may allow reasonable proportions of income from businesses or farms to be used to increase capital assets, so that income may be increased; and (B) in AFDC—The amount of real and personal property that can be reserved for each assistance unit shall not be in excess of one thousand dollars equity value (or such lesser amount as the State specifies in its State plan) excluding only:

(*1*) The home which is the usual residence of the assistance unit;

(*2*) One automobile, up to $1,500 of equity value or such lower limit as the State may specify in the State plan (any excess equity value must be applied towards the general resource limit specified in the State plan);

(*3*) One burial plot (as defined in the State plan) for each member of the assistance unit;

(*4*) Bona fide funeral agreements (as defined and within limits specified in the State plan) up to a total of $1,500 of equity value or such lower limit as the State may specify in the State plan for each member of the assistance unit;

(5) Real property for a period of six months (or at the option of the State, nine months) which the family is making a good faith effort (as defined in the State plan) to sell subject to following provisions. The family must sign an agreement to dispose of the property and to repay the amount of aid received during such period that would not have been paid had the property been sold at the beginning of such period, but not to exceed the amount of the net proceeds of the sale. If the property has not been sold within the specified time period, or if eligibility stops for any other reason, the entire amount of aid paid during such period will be treated as an overpayment; and

(6) At State option, basic maintenance items essential to day-to-day living such as clothes, furniture and other similarly essential items of limited value.

(ii) Provide that in determining need and the amount of the assistance payment, after all policies governing the reserves and allowances and disregard or setting aside of income and resources referred to in this section have been uniformly applied:

(A) In determining need, all remaining income and resources shall be considered in relation to the State's need standard;

(B) In determining financial eligibility and the amount of the assistance payment all remaining income (except unemployment compensation received by an unemployed principal earner) and, except for AFDC, all resources may be considered in relation to either the State's need standard or the State's payment standard. Unemployment compensation received by an unemployed principal earner shall be considered only by subtracting it from the amount of the assistance payment after the payment has been determined under the State's payment method;

(C) States may have policies which provide for allocating an individual's income for his or her own support if the individual is not applying for or receiving assistance; for the support of other individuals living in the same household but not receiving assistance; and for the support of other individuals living in another household. Such other individuals are those who are or could be claimed by the individual as dependents for determining Federal personal income tax liability, or those he or she is legally obligated to support. No income may be allocated to meet the needs of an individual who has been sanctioned under §§ 224.51, 232.11(a)(2), 232.12(d), 238.22 or 240.22 or who is required to be included in the assistance unit and has failed to cooperate. The amount allocated for the individual and the other individuals who are living in the home must not exceed the State's need standard amount for a family group of the same composition. The amount allocated for individuals not living in the home must not exceed the amount actually paid.

(D) Income after application of disregards, except as provided in paragraph (a)(3)(xiii) of this section, and resources available for current use shall be considered. To the extent not inconsistent with any other provision of this chapter, income and resources are considered available both when actually available and when the applicant or recipient has a legal interest in a liquidated sum and has the legal ability to make such sum available for support and maintenance.

(E) Income and resources will be reasonably evaluated. Resources will be evaluated according to their equity value.

(F) When the AFDC assistance unit's income, after applying applicable disregards, exceeds the State need standard for the family because of receipt of nonrecurring earned or unearned lump sum income (including for AFDC, title II and other retroactive monthly benefits, and payments in the nature of a windfall, e.g., inheritances or lottery winnings, personal injury and worker compensation awards, to the extent it is not earmarked and used for the purpose for which it is paid, i.e., monies for back medical bills resulting from accidents or injury, funeral and burial costs, replacement or repair of resources, etc.), the family will be ineligible for aid for the full number of months derived by dividing the sum of the lump sum income and other income by the monthly need standard for a family of that size. Any income remaining from this calculation is income in the first month following the period of ineligibility. The period of ineligibility shall begin with the month of receipt of the nonrecurring income or, at State option, as late as the corresponding payment month. For purposes of applying the lump sum provision, family includes all persons whose needs are taken into account in determining eligibility and the amount of the assistance payment. A State may shorten the remaining period of ineligibility when: the standard of need increases and the amount the family would have received also changes; the lump sum income or a portion thereof becomes unavailable to the family for a reason beyond the control of the family; or the family incurs and pays for medical expenses. If the State chooses to shorten the period of ineligibility, the State plan shall:

(*1*) Identify which of the above situations are included;

(*2*) In the case of situations involving the increase in the need standard and changes in the amount that have been paid to the family, specify the types of circumstances which will be included;

(*3*) In the case of situations involving the unavailability of the lump sum income, include a definition of unavailability, and specify what reasons will be considered beyond the control of the family;

(*4*) In the case of situations involving the payment of medical expenses, specify the types of medical expenses the State will allow to be offset against the lump sum income.

For purposes of this paragraph (a)(3): Automobile means a passenger car or other motor vehicle used to provide transportation of persons or goods. (In AFDC, in appropriate geographic areas, one alternate primary mode of transportation may be substituted for the automobile); Equity value means fair market value minus encumbrances (legal debts); Fair market value means the price an item of a particular make, model, size, material or condition will sell for on the open market in the geographic area involved (If a motor vehicle is especially equipped with apparatus for the handicapped, the apparatus shall not increase the value of the vehicle); Liquid assets are those properties in the form of cash or other financial instruments which are convertible to cash and include savings accounts, checking accounts, stocks, bonds, mutual fund shares, promissory notes, mortgages, cash value of insurance policies, and similar properties; Need standard means the money value assigned by the State to the basic and special needs it recognizes as essential for applicants and recipients; Payment standard means the amount from which non-exempt income is subtracted;

(iii) States may prorate income received by individuals employed on a contractual basis over the period of the contract or may prorate intermittent income received quarterly, semiannually, or yearly over the period covered by the income. In OAA, AB, APTD and AABD, they may use the prorated amount to determine need under § 233.23 and the amount of the assistance payment under §§ 233.24 and 233.25. In AFDC, they may use the prorated amount to determine need under § 233.33 and the amount of the assistance payment under §§ 233.34 and 233.35.

(iv) Provide that in determining the availability of income and resources, the following will not be included as income (A) Except for AFDC, income equal to expenses reasonably attributable to the earning of income (including earnings from public service employment); (B) loans and grants, such as scholarships, obtained and used under conditions that preclude their use for current living costs; (C) home produce of an applicant or recipient, utilized by him and his household for their own consumption; (D) for AFDC, any amounts paid by a State IV-A agency from State-only funds to meet needs of children receiving AFDC, if the payments are made under a statutorily-established State program which has been continuously in effect since before January 1, 1979; (E) for AFDC, income tax refunds (except the earned income credit (EIC) portion) but such payments shall be considered as resources; and (F) at State option, small nonrecurring gifts, such as those for Christmas, birthdays and graduations, not to exceed $30 per recipient in any quarter.

(v) Provide that agency policies will assure that:

(A) In determining eligibility for an assistance payment, support payments assigned under § 232.11 of this chapter will be treated in accordance with § 232.20 and § 232.21 of this chapter; and

(B) In determining the amount of an assistance payment, assigned support payments retained in violation of § 232.12(b)(4) of this chapter, will be counted as income to meet need unless the approved IV-A State plan provides that such support payments are subject to IV-D recovery under §§ 302.31(a)(3) and 303.80 of this title or unless such payments are sufficient to render the family ineligible as provided at § 232.20 of this chapter.

(vi)(A) In family groups living together, income of the spouse is considered available for his spouse and income of a parent is considered available for children under 21, except that, under the AFDC plan, if a spouse or parent is receiving SSI benefits under title XVI, then, for the period for which such benefits are received, his income and resources shall not be counted as income and resources available to the AFDC unit. For purposes of this exception, "a spouse or parent receiving SSI benefits" includes a spouse or parent receiving mandatory or optional State supplementary payments under section 1616(a) of the Act or under section 212 of Pub. L. 93-66.

(B) Income of an alien parent, who is disqualified pursuant to § 233.50(c) is considered available to the otherwise eligible child by applying the stepparent deeming formual at 45 CFR 233.20(a)(3)(xiv).

(vii) If the State agency establishes policy under which assistance from other agencies and organizations will not be deducted in determining the amount of assistance to be paid, provide that no duplication shall exist between such other assistance and that provided by the public assistance agency. In such complementary program relationships, nonduplication shall be assured by provision that such aid will be considered in relation to: (*a*) The different purpose for which the other agency grants aid such as vocational rehabilitation; (*b*) the provision of goods and services that are not included in the statewide standard of the public assistance agency, e.g., a private agency might provide money for special training for a child or for medical care when the public assistance agency does not carry this responsibility; or housing and urban development payments might be provided to cover moving expenses that are not included in the assistance standard; or (*c*) the fact that public assistance funds are insufficient to meet the total amount of money determined to be needed in accordance with the statewide standard. In such instances, grants by other agencies in an amount sufficient to make it possible for the individual to have the amount of money determined to be needed, in accordance with the public assistance agency standard, will not constitute duplication.

(viii) Provide that: (A) Payment will be based on the determination of the amount of assistance needed; (B) if full individual payments are precluded by maximums or insufficient funds, adjustments will be made by methods applied uniformly statewide; (C) in the case of AFDC no payment of aid shall be made to an assistance unit in any month in which the amount of aid prior to any adjustments is determined to be less than $10; and (D) an individual who is denied aid because of the limitation specified in (C) of this section, or because the payment amount is determined to be zero as a result of rounding the payment amount as required by § 233.20(a)(2)(iv), shall be deemed a recipient of aid for all other purposes except participation in the Community Work Experience Program.

(ix) Provide that the agency will establish and carry out policies with reference to applicants' and recipients' potential sources of income that can be developed to a state of availability.

(x) Provide that the income and resources of individuals who are receiving SSI benefits under title XVI, for the period for which such benefits are recieved, shall not be counted as income and resources of an assistance unit applying for or receiving assistance under title IV-A. Under this requirement, "individuals receiving SSI benefits under title XVI" includes individuals receiving mandatory or optional State supplementary payments under section 1616(a) of the Act or under section 212 of Pub. L. 93-66.

(xi) In the case of AFDC if the State chooses to count the value of the food stamp coupons as income, provide that the State plan shall:

(A) Identify the amount for food included in its need and payment standards for an assistance unit of the same size and composition. (States which have a flat grant system must estimate the amount based on historical data or some other justifiable procedure.); and

(B) Specify the amount of such food stamp coupons that it will count as income. Under this requirement, the amount of food stamp coupons which a State may count as income may not exceed the amount for food established in its payment standard for an assistance unit of the same size and composition.

(xii) In the case of AFDC if the State chooses to count the value of the governmental rent or housing subsidies as income, provide that the State plan shall:

(A) Identify the amount for shelter included in its need and payment standards for an assistance unit of the same size and composition. (States which have a flat grant system must estimate this amount based on historical data or some other justifiable procedure.); and

(B) Specify the amount of such housing assistance that it will count as income. Under this requirement, the amount of such rent or housing subsidies which a State may count as income may not exceed the amount for shelter established in its payment standard for assistance unit of the same size and composition.

(xiii) Under the AFDC plan, provide that no assistance unit is eligible for aid in any month in which the unit's income (other than the assistance payment) exceeds 185 percent of the State's need standard (including special needs) for a family of the same composition (including special needs), without application of the disregards in paragraph (a)(11)(i) (except to the extent provided for under paragraph (a)(3)(xix)) and (ii) of this section.

(xiv) For AFDC, in States that do not have laws of general applicability holding the stepparent legally responsible to the same extent as the natural or adoptive parent, the State agency shall count as income to the assistance unit the income of the stepparent (i.e., one who is married, under State law, to the child's parent) of an AFDC child who is living in the household with the child after applying the following disregards (exception: if the stepparent is included in the assistance unit, the disregard under paragraph (a)(11) (i) and (ii) of this section apply instead:

(A) The first $75 of the gross earned income of the stepparent if he or she is employed full-time. The State agency shall have in place a procedure under which it determines and applies a disregarded amount less than $75 for stepparents who are not employed on a full-time basis or not employed throughout the month;

(B) An additional amount for the support of the stepparent and any other individuals who are living in the home, but whose needs are not taken into account in making the AFDC eligibility determinations except for sanctioned individuals or individuals who are required to be included in the assistance unit but have failed to cooperate and are or could be claimed by the stepparent as dependents for purposes of determining his or her Federal personal income tax liability. This disregarded amount shall equal the State's need standard amount for a family group of the same composition as the stepparent and those other individuals described in the preceding sentence;

(C) Amounts actually paid by the stepparent to individuals not living in the home but who are or could be claimed by him or her as dependents for purposes of determining his or her Federal personal income tax liability; and

(D) Payments by such stepparent of alimony or child support with respect to individuals not living in the household.

(xv) For AFDC, provide for the consideration of the income and resources of an alien's sponsor who is an individual as provided in § 233.51.

(xvi) For AFDC, provide that in considering the availability of income and resources, support and maintenance assistance (including home energy assistance) will be taken into account in accordance with § 233.53.

(xvii) In the case of AFDC, if the State chooses to disregard monthly income of any dependent child when the income is derived from participation in a program under the JTPA, provide that the State plan shall:

(A) Identify from which programs under the JTPA, income will be disregarded;

(B) In the case of earned income, specify what amount will be disregarded, and the length of time the disregard will be applicable (up to six months per calendar year); and

(C) In the case of unearned income, specify what amount will be disregarded, and the length of time per calendar year the disregard will be applicable if any such limit is chosen.

(xviii) For AFDC, in the case of a dependent child whose parent or legal guardian (as defined under State law) is a minor, i.e. under the age selected by the State pursuant to § 233.90(b) (without regard to school attendance), the State shall count as income to the assistance unit the income, after appropriate disregards, of such minor's own parent(s) or legal guardian(s) living in the same household as the minor and dependent child. The disregards to be applied are the same as are applied to the income of a stepparent pursuant to paragraph (a)(3)(xiv) of this section. However, in applying the disregards, each employed parent or legal guardian will receive the benefit of the work expense disregard in paragraph (a)(3)(xiv)(A) of this section.

(xix) In the case of AFDC, if the State chooses to disregard monthly earned income of dependent children who are full-time students in the determination of whether the family's income exceeds the limit under § 233.20(a)(3)(xiii) of this section, provide that the State plan shall specify what amounts will be disregarded and the length of time the disregard will be applicable (up to six months per calendar year) except that earned income derived from participation in a program under the JTPA may only be disregarded under this paragraph, paragraph (a)(3)(xvii) or a combination of both paragraphs for a total of 6 months per calendar year.

(xx) In the case of AFDC, if the State chooses to disregard in the determination of eligibility the monthly earned income of dependent children applying for AFDC who are full-time students, provided that the State plan shall:

(A) Specify the amount that will be disregarded, and

(B) Provide that the disregard shall only apply to the extent that the earned income is also disregarded pursuant to paragraph (a)(3)(xix) of this section.

(4) *Disregard of income in OAA, AFDC, AB, APTD, OR AABD.* (i) For all programs except AFDC. If the State chooses to disregard income from all sources before applying other provisions for disregarding or setting aside income, specify the amount that is first to be disregarded, but not more than $7.50 per month, of any income of an individual, child or relative claiming assistance. All income must be included such as social security or other benefits, earnings, contributions from relatives, or other income the individual may have.

(ii) Provide that in determining eligibility for public assistance and the amount of the assistance payment, the following will be disregarded as income and resources:

(*a*) In OAA, AB, APTD, and AABD, the value of the coupon allotment under the Food Stamp Act of 1964 in excess of the amount paid for the coupons;

(*b*) The value of the U.S. Department of Agriculture donated foods (surplus commodities);

(*c*) Any payment received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

(*d*) Any grant or loan to any undergraduate student for educational purposes made or insured under any programs administered by the Commissioner of Education;

(*e*) Any funds distributed per capita to or held in trust for members of any Indian tribe under Pub. L. 92-254, Pub. L. 93-134 or Pub. L. 94-540;

(*f*) Any benefits received under Title VII, Nutrition Program for the Elderly, of the Older Americans Act of 1965, as amended;

(*g*) Payments for supporting services or reimbursement of out-of-pocket expenses made to individual volunteers serving as foster grandparents, senior health aides, or senior companions, and to persons serving in the Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE) and any other programs under titles II and III, pursuant to section 418 of Pub. L. 93-113;

(*h*) Payments to applicants or recipients participating in the Volunteers in Service to America (VISTA) Program, except that this disregard will not be applied when the Director of ACTION determines that the value of all such payments, adjusted to reflect the number of hours such volunteers are serving, is equivalent to or greater than the minimum wage then in effect under the Fair Labor Standards Act of 1938, or the minimum wage under the laws of the States where the volunteers are serving, whichever is greater. (Section 404(g) of Pub. L. 93-113, as amended by section 9 of Pub. L. 96-143);

(*i*) The value of supplemental food assistance received under the Child Nutrition Act of 1966 as amended, and the special food service program for children under the National School Lunch Act, as amended (Pub. L. 92-433 and Pub. L. 93-150);

(*j*) [Reserved]

(*k*) Tax-exempt portions of payments made pursuant to Pub. L. 92-203, the Alaska Native Claims Settlement Act;

(*l*) Benefits paid to eligible households under the Low Income Home Energy Assistance Act of 1981 pursuant to section 2605(f) of Pub. L. 97-35;

(*m*) Effective October 17, 1975, pursuant to section 6 of Pub. L. 94-114 (89 Stat. 577, 25 U.S.C. 459e) receipts distributed to members of certain Indian tribes which are referred to in section 5 of Pub. L. 94-114 (89 Stat. 577, 25 U.S.C. 459d).

(iii) Provide that income and resources which are disregarded or set aside under this part will not be taken into consideration in determining the need of any other individual for assistance.

(iv) For AFDC, any amounts determined to have been paid by a State from State-only funds to supplement or otherwise increase the amount of aid paid to an assistance unit as computed under § 233.35 for a month in recognition of current or anticipated needs of the assistance unit for that same month shall not be counted as income—to the extent that the total of the State supplemental payment, the AFDC payment and actual income (i.e., the amount of income received during the payment month after subtracting from gross income the $75 work expense disregard (to recognize mandatory payroll deductions, transportation costs, and other work expenses), child care and other applicable disregards) received in that month are not in excess of what the State would have paid for that month to an assistance unit of the same size and composition with no income—in computing the assistance payment under § 233.35 for the corresponding payment month.

(5) *Proration of shelter, utilities, and similar needs in AFDC.* (i) Provide that the State agency may prorate allowances in the need and payment standards for shelter, utilities, and similar needs when the AFDC assistance unit lives together with other individuals as a household; except that, the State shall not prorate with respect to any person receiving SSI to whom the statutory one-third reduction (section 1612(a)(2)(A)(i) of the Act) is applied, or prorate when a bona fide landlord-tenant relationship exists. If the State chooses to prorate under this paragraph, it must prorate both the need standard and payment standard.

(ii) If the State agency elects to prorate allowances for shelter, utilities, and similar needs the State plan must:

(A) Indicate which allowances will be prorated, and describe the procedure which will be used to prorate the allowances;

(B) Provide that the allowances will be prorated on a reasonable basis; and

(C) Specify the circumstances under which proration will occur, including a description of which individuals are considered to be living with an AFDC assistance unit as a household.

(6) *Disregard of earned income; definition.* Provide that for purposes of disregarding earned income the agency policies will include:

(i) A definition of "earned income" in accordance with the provisions of paragraphs (a)(6) (iii) through (ix) of this section; and

(ii) Provision for disregarding earned income for the period during which it is earned, rather than when it is paid, in cases of lump-sum payment for services rendered over a period of more than 1 month.

(iii) The term earned income encompasses income in cash or in kind earned by an individual through the receipt of wages, salary, commissions, or profit from activities in which he is engaged as a self-employed individual or as an employee. For AFDC, "earned income" means gross earned income prior to any deductions for taxes or for any other purposes, except as provided in paragraph (a)(6)(v). Such earned income may be derived from his own employment, such as a business enterprise, or farming; or derived from wages or salary received as an employee. It includes earnings over a period of time for which settlement is made at one given time, as in the instance of sale of farm crops, livestock, or poultry. For OAA, AB, APTD and AABD only, in considering income from farm operation, the option available for reporting under OASDI, namely the "cash receipts and disbursements" method, i.e., a record of actual gross, of expenses, and of net, is an individual determination and is acceptable also for these assistance programs.

(iv) With reference to commissions, wages, or salary, the term "earned income" means the total amount, irrespective of personal expenses, such as income-tax deductions, lunches, and transportation to and from work, and irrespective of expenses of employment which are not personal, such as the cost of tools, materials, special uniforms, or transportation to call on customers.

(v) (A) For OAA, AB, APTD, and AABD, with respect to self-employment, the term "earned income" means the total profit from business enterprise, farming, etc., resulting from a comparison of the gross income received with the "business expenses," i.e., total cost of the production of the income. Personal expenses, such as income-tax payments, lunches, and transportation to and from work, are not classified as business expenses.

(B) For AFDC, with respect to self-employment the term "earned income" means the total profit from business enterprise, farming, etc., resulting from a comparison of the gross receipts with the "business expenses," i.e., expenses directly related to producing the goods or services and without which the goods or services could not be produced. However, items such as depreciation, personal business and entertainment expenses, personal transportation, purchase of capital equipment and payments on the principal of loans for capital assets or durable goods are not business expenses.

(vi) The definition shall exclude the following from "earned income": Returns from capital investment with respect to which the individual is not himself actively engaged, as in a business (for example, under most circumstances, dividends and interest would be excluded from "earned income"); benefits (not in the nature of wages, salary, or profit) accruing as compensation, or reward for service, or as compensation for lack of employment (for example, pensions and benefits, such as United Mine Workers' benefits or veterans' benefits).

(vii) With regard to the degree of activity, earned income is income produced as a result of the performance of services by a recipient; in other words, income which the individual earns by his own efforts, including managerial responsibilities, would be properly classified as earned income, such as management of capital investment in real estate. Conversely, for example, in the instance of capital investment wherein the individual carries no specific responsibility, such as where rental properties are in the hands of rental agencies and the check is forwarded to the recipient, the income would not be classified as earned income.

(viii) Reserves accumulated from earnings are given no different treatment than reserves accumulated from any other sources.

(ix) In the case of an applicant or recipient of AFDC, "earned income" for any month shall include the amount of the earned income credit, including advance payments, which the individual receives in that month. In any case where the amount of the advance payments which a recipient received exceeds the amount of the credit due, the State agency shall adjust the benefits of an individual who is a current recipient to provide payment of the amount equal to the amount of AFDC benefits lost. Such adjustment shall be made with reasonable promptness. In any case where the amount of the advance payments a recipient received is less than the credit due, the State agency shall count as earned income in the month received any earned income credit payment received by the individual at the end of the taxable year.

(A)(*1*) When the State agency determines that an individual applying for or receiving AFDC is eligible to receive advance payments of the earned income credit, the State agency may allow a reasonable amount of time (up to a maximum of 14 days) before counting the amount of the advance payments to permit the recipient to file for and receive the advance earned income credit.

(*2*) Where an individual who is eligible to receive advance payments of the earned income credit has made all possible efforts to receive the advance payments but does not receive them because of the refusal of the employer to issue them, the State agency shall not count the amount as earned income.

(B)(*1*) The State agency shall determine that an individual is eligible to receive advance payments of the earned income credit only where the State agency reasonably expects that the individual will be eligible to receive the earned income credit for the current taxable year. The State agency shall make the determination based upon the requirements specified in the Internal Revenue Code under 26 U.S.C. 43 and 3507, and under the corresponding regulations at 26 CFR 1.43-1, 1.43-2, 31.3507-1 and 31.3507-2, which establish eligibility criteria for receipt of the earned income credit and advance payments of the credit.

(*2*) In order to determine the amount of the advance payments an individual is eligible to receive, the State agency shall consult the tables provided by the Secretary of the Treasury.

(C) In any case where the amount of the advance payments counted by the State agency exceeds the amount of the allowable credit, the State agency shall adjust the benefits of an individual who is a current recipient to provide payment of the amount equal to the amount of the benefits lost. Such adjustments shall be made with reasonable promptness. In any case where the amount of the advance payments counted by the State agency is less than the allowable credit, the State agency shall count as earned income in the month received any earned income credit payment received by the individual at the end of the taxable year to the extent it exceeds the amount counted as advance payments.

(7) *Disregard of earned income; method.* (i) Provide that for other than AFDC, the following method will be used for disregarding earned income: The applicable amounts of earned income to be disregarded will be deducted from the gross amount of "earned income," and all work expenses, personal and non-personal, will then be deducted. Only the net amount remaining will be applied in determining need and the amount of the assistance payment.

(ii) In applying the disregard of income under paragraph (a)(11)(ii)(B) of this section to an applicant for AFDC, there will be a preliminary step to determine whether the assistance unit in which he or she is a member is eligible without the application of any AFDC provisions for the disregard in (a)(11)(ii)(B) by applying the unit's gross earnings (less the disregards in (a)(11)(i) and (a)(11)(iv)) and all other income to the State's standard of need. This preliminary step does not apply if the assistance unit received assistance in one of the four months prior to the month of application.

(8) *Disregard of earned income applicable only to OAA, APTD, or AABD.* If the State chooses to disregard earned income, specify the amount to be disregarded of the first $80 per month of income that is earned by an aged or disabled individual claiming OAA, APTD, or AABD, who is not blind, but not more than $20 per month plus one-half of the next $60 of such earned income.

(9) *Disregard of income and resources applicable only to APTD or AABD.* If the State chooses to disregard income (which may be additional to the income disregarded under paragraph (a)(8) of this section) or resources for a disabled individual to achieve the fulfillment of a plan of self-support, provide that the amounts of additional income and resources will not exceed those found necessary for the period during which the individual is actually undergoing vocational rehabilitation, and specify the period, not in excess of 36 months, for which such amounts are to be disregarded.

(10) *Disregard of income and resources applicable only to AB or AABD.* Provide that, in determining the need of individuals who are blind, (i) the first $85 per month of earned income of the individual plus one-half of earned income in excess of $85 per month will be disregarded; and (ii) if the individual has a plan for achieving self-support, such additional income and resources as are necessary to fulfill such plan will be disregarded for a period not in excess of 12 months. Such additional income and resources may be disregarded for an additional period not in excess of 24 months (for a total of 36 months), as specified in the State plan.

(11) *Disregard of income and resources applicable only to AFDC.* (i) For purposes of eligibility determination, the State must disregard from the monthly earned income, i.e., earned income as defined in § 233.20(a)(6)(iii), of each individual whose needs are included in the eligibility determination:

(A) Disregard all of the monthly earned income of each child receiving AFDC if the child is a full-time student or is a part-time student who is not a full-time employee. A student is one who is attending a school, college, or university or a course of vocational or technical training designed to fit him or her for gainful employment and includes a participant in the Job Corps program under the Job Training Partnership Act (JTPA).

(B) The first $75.

(C) An amount equal to the actual cost, but not to exceed $160 (or a lesser amount in the case of an individual not engaged in full-time employment or not employed throughout the month), for the care of each dependent child or incapacitated adult living in the same home and receiving AFDC. The State agency shall have in place a procedure under which it determines and applies a disregarded amount less than $160.

(D) Where appropriate, an amount equal to $30 plus one-third of the earned income not already disregarded under paragraphs (a)(11)(i) and (a)(11)(v) of this section of an individual who received assistance in one of the four prior months.

(ii) For purposes of benefit calculation for individuals found eligible under paragraph (a)(11)(i) of this section, the following disregards must be made by the State:

(A) Disregard all of the monthly earned income of each child receiving AFDC if the child is a full-time student or is a part-time student who is not a full-time employee. A student is one who is attending a school, college, or university or a course of vocational or technical training designed to fit him or her for gainful employment and includes a participant in the Job Corps program under the Job Training Partnership Act (JTPA).

(B) Disregard from any other individual's earned income the amounts specified in paragraphs (a)(11)(i) (B) and (C) of this section, and $30 plus one-third of his earned income not already disregarded under paragraphs (a)(11)(ii) and (a)(11)(v) of this section. However, the State may not provide the disregard to an individual after the fourth consecutive month (any month for which the unit loses the $30 plus one-third disregard because of a provision in paragraph (a)(11)(iii) of this section, shall be considered as one of these months) it has been applied to his earned income until after an additional twelve consecutive months during which he is not a recipient of AFDC. If income from a recurring source resulted in suspension or termination due to an extra paycheck, the month of ineligibility does not interrupt the accumulation of consecutive months of the $30 and one-third disregard, nor does it count as one of the consecutive months.

(iii) The applicable earned income disregards in paragraphs (i) (B) and (C) and (ii)(B) of this paragraph do not apply to the earned income of the individual for the month in which one of the following conditions apply to him:

(A) An individual terminated his employment or reduced his earned income without good cause (as specified in the State plan) within the period of 30 days preceding such month;

(B) An individual refused without good cause (as specified in the State plan) within the period of 30 days preceding such month to accept employment in which he is able to engage which is offered through the public employment offices of the State, or is otherwise offered by an employer if the offer of such employer is determined by the State or local agency administering the State plan, after notification by him, to be a bona fide offer of employment;

(C) An individual failed without good cause (as specified in the State plan) to make a timely report (as defined in § 233.37(c)) of that income; or

(D) The individual voluntarily requests assistance to be terminated for the primary purpose of avoiding receiving the $30 and one-third disregard for four consecutive months.

(iv) The treatment of earned income and expenses under WIN is as follows:

(A) For earned income from regular employment or on-the-job training, pursuant to section 432(b)(1) of the Act the disregards in subdivisions (i) and(ii)(B) of this subparagraph shall apply.

(B) For institutional and work experience training, pursuant to section 432(b)(2) of the Act, the $30 monthly incentive payment and the reimbursement for training related expenses made by the manpower agency are totally disregarded; and

(C) For public service employment, pursuant to section 432(b)(3) of the Act, work related expenses (the disregards in subdivision (i) (B) and (C)) are deducted, but the $30 plus one-third disregard of subdivision (i)(D) or (ii)(B) does not apply.

(v) The treatment of earned income and expenses under JOBS is as follows:

(A) For earned income from regular employment or on-the-job training, as described at § 250.61, the disregards in paragraphs (a)(11)(i) and (a)(11)(ii)(B) shall apply.

(B) For earned income from a job under the work supplementation component, as described at § 250.62, the disregards in paragraphs (a)(11)(i) and (a)(11)(ii)(B) shall apply unless the State IV-A agency in its State JOBS plan, has elected to provide otherwise under § 250.62(j) and § 250.62(k).

(C) For all activities under JOBS and self-initiated education and training in non-JOBS areas, advance payment or reimbursement to the individual for child care, transportation, work-related expenses, or work-related supportive services is disregarded.

(D) Payment or reimbursement of child care pursuant to Part 255 for employed individuals who are not JOBS participants and one-time work-related expenses for individuals who are not JOBS participants pursuant to Part 255 are disregarded.

(vi) At State option, disregard all or part of the monthly income of any dependent child applying for or receiving AFDC when the income is derived from a program carried out under the Job Training Partnership Act of 1982, except that in respect to earned income such disregard may not exceed six months per calendar year.

(vii) At State option, disregard all or part of the monthly earned income of any dependent child applying for AFDC, if the child is a full-time student, and that income has been disregarded for purposes of paragraph (a)(3)(xiii) of this section.

(12) *Recoupment of overpayments and correction of underpayments for programs other than AFDC.* Specify uniform Statewide policies for:

(i) Recoupment of overpayments of assistance, including certain overpayments resulting from assistance paid pending hearing decisions.

(A) The State may not recoup any overpayment previously made to a recipient:

(*1*) Unless the recipient has income or resources exclusive of the current assistance payment currently available in the amount by which the agency proposes to reduce payments: except that,

(*2*) Where such overpayments were occassioned or caused by the recipient's willful withholding of information concerning his income, resources or other circumstances which may affect the amount of payment, the State may recoup prior overpayments from current assistance grants irrespective of current income or resources.

(B) Withholding of information which is subject to the provisions of paragraph (a)(12)(i)(A)(*2*) of this section includes the following:

(*1*) Willful misstatements (either oral or written) made by a recipient in response to oral or written questions from the State agency concerning the recipient's income, resources or other circumstances which may affect the amount of payment. Such misstatements may include understatements of amounts of income or resources and omission of an entire category of income or resources;

(*2*) A willful failure by the recipient to report changes in income, resources or other circumstances which may affect the amount of payment, if the State agency has clearly notified the recipient of an obligation to report such changes. The recipient shall be given such notification periodically at times (not less frequently than semi-annually) and by methods which the State agency determines will effectively bring such reporting requirements to the recipient's attention:

(*3*) A willfull failure by the recipient (*i*) to report receipt of a payment which the recipient knew represented an erroneous overpayment, or (*ii*) to notify the State agency of receipt of a check which exceeded the prior check by at least the amount which the State agency had previously notified the recipient (pursuant to the provisions of paragraph (a)(12)(i)(A)(*4*) of this section) might represent an overpayment and constitute a sum to which the recipient would not be entitled. In making a determination pursuant to this paragraph (a)(12)(i)(B)(*3*), all relevant circumstances including the amount by which the erroneous payment exceeded the previous payment shall be considered.

(C) Each periodic notification under paragraph (a)(12)(i)(B)(*2*) of this section shall:

(*1*) Include a reminder that it is the recipient's continuing obligation to furnish to the State agency accurate and timely information concerning changes in income, resources, or other circumstances which may affect the amount of payment, within a reasonable specified period after such change. The recipient may also be notified that a failure to so notify the State agency within the designated time period may constitute a willful withholding of such information and permit the State agency to recover any overpayment occasioned or caused by the willful withholding;

(*2*) Specifically and comprehensibly in simple phraseology indicate the type of information to be disclosed by the recipient. Examples shall be furnished of the most frequent types of newly acquired income or resources (e.g., inheritance, wages from a part-time job);

(*3*) Require that, if there is any doubt whether a particular change in circumstances constitutes such reportable information, the recipient contact the State agency or a designated representative thereof within a reasonable specified period of time after such change in circumstances;

(*4*) If the State plan provides for recoupment in the circumstances described in paragraph (a)(12)(i)(B)(*3*)(*ii*) of this section, notify the recipient that if the check received exceeds the prior check by a specified amount (which amount may not be less than that which a reasonable man should have known was erroneous), this increased check may constitute a sum to which the recipient is not entitled. In such instances, the notification may require that the recipient notify the State agency or a designated representative thereof prior to the negotiation of such check, so that corrective action may be taken; the State agency shall respond to such notification within 24 hours. The recipient may also be notified that a failure to so notify the State agency within the designated time period may constitute a willful withholding of such information and permit the State agency to recover such overpayment.

(D) The State agency shall require periodic formal acknowledgement by recipients (on a form utilized for this purpose) that the reporting obligations of this paragraph had been brought to the recipient's attention and that they were understood.

(E) Any recoupment of overpayments made under circumstances other than those specified in paragraph (a)(12)(i)(B) of this section shall be limited to overpayments made during the 12 months preceding the month in which the overpayment was discovered.

(F) Any recoupment of overpayments permitted by paragraph (a)(12)(i)(A)(*2*) of this section may be made from available income and resources (including disregarded, set-aside or reserved items) or from current assistance payment or from both. If recoupments are made from current assistance payments, the State shall, on a case-by-case basis, limit the proportion of such payments that may be deducted in each case, so as not to cause undue hardship to recipients.

(G) The plan may provide for recoupment in all situations specified herein, or only in certain of the circumstances specified herein, and for waiver of the overpayment where the cost of collection would exceed the amount of the overpayment.

(H) Election by the State not to recoup overpayments shall not waive the provisions of §§ 205.40, and 205.41, or any other quality control requirement.

(ii) Prompt correction of underpayments to current recipients, resulting from administrative error where the State plan provides for recoupment of overpayments. Under this requirement:

(*a*) Retroactive corrective payment shall be made only for the 12 months preceding the month in which the underpayment is discovered;

(*b*) For purposes of determining continued eligibility and amount of assistance, such retroactive corrective payments shall not be considered as income or as a resource in the month paid nor in the next following month; and

(*c*) No retroactive payment need be made where the administrative cost would exceed the amount of the payment.

(13) *Recovery of overpayments and correction of underpayments for AFDC.* (i) Specify uniform Statewide policies for recovery of overpayments of assistance, including overpayments resulting from assistance paid pending hearing decisions. Overpayment means a financial assistance payment received by or for an assistance unit for the payment month which exceeds the amount for which that unit was eligible. (The agency may deny assistance for the corresponding payment month rather than recover if the assistance unit was ineligible for the budget month, the State becomes aware of the ineligibility when the monthly report is submitted, the recipient accurately reported the budget month's income and other circumstances, and the assistance unit will be eligible for the following payment month.)

(A) The State must take all reasonable steps necessary to promptly correct any overpayment.

(*1*) Any recovery of an overpayment to a current assistance unit, including a current assistance unit or recipient whose overpayment occurred during a prior period of eligibility, must be recovered through repayment (in part or in full) by the individual responsible for the overpayment or recovering the overpayment by reducing the amount of any aid payable to the assistance unit of which he or she is a member, or both.

(*2*) If recovery is made from the grant, such recovery shall result in the assistance unit retaining, for any payment month, from the combined aid, income and liquid resources, (without application of section 402(a)(8) of the Act) not less than 90 percent of the amount payable under the State plan to a family of the same composition with no other income. Where a State chooses to recover at a rate less than the maximum, it must recover promptly.

(B) The State shall recover an overpayment from (*1*) the assistance unit which was overpaid, or (*2*) any assistance unit of which a member of the overpaid assistance unit has subsequently become a member, or (*3*) any individual members of the overpaid assistance unit whether or not currently a recipient. If the State recovers from individuals who are no longer recipients, or from recipients who refuse to repay the overpayment from their income and resources, recovery shall be made by appropriate action under State law against the income or resources of those individuals.

(C) If through recovery, the amount payable to the assistance unit is reduced to zero, members of the assistance unit are still considered recipients of AFDC.

(D) In cases which have both an underpayment and an overpayment, the State may offset one against the other in correcting the payment.

(E) Prompt recovery of an overpayment: A State must take one of the following three actions by the end of the quarter following the quarter in which the overpayment is first identified:

(*1*) Recover the overpayment, (*2*) initiate action to locate and/or recover the overpayment from a former recipient, or (*3*) execute a monthly recovery agreement from a current recipient's grant or income/resources.

(ii) Specify uniform Statewide policies for prompt correction of any underpayments to current recipients and those who would be a current recipient if the error causing the underpayment had not occurred. Underpayment means a financial assistance payment received by or for an assistance unit for the payment month which is less than the amount for which the assistance unit was eligible, or failure by the State to issue a financial assistance payment for the payment month to an eligible assistance unit if such payment should have been issued. Under this requirement, for purposes of determining continued eligibility and amount of assistance, such retroactive corrective payments shall not be considered as income, or as a resource in the month paid nor in the next following month.

(iii) Paragraph (a)(13) of this section is effective for incorrect payments which are identified subsequent to September 30, 1981.

(iv) In locating former recipients who have outstanding overpayments the State should use appropriate data sources such as State unemployment insurance files, State Department of Revenue information from tax returns, State automobile registration, Bendex, and other files relating to current or former recipients.

(v) The State must maintain information on the individual and total number and amount of overpayments identified and their disposition for current and former recipients.

(vi) The State may elect not to attempt recovery of an overpayment from an individual no longer receiving aid where the overpayment amount is less than $35. Where the overpayment amount owed by an individual no longer receiving aid is $35 or more, the State can determine when it is no longer cost-effective to continue overpayment recovery efforts, provided it has made reasonable efforts to recover the overpayment from the individual. Reasonable efforts must include notification of the amount of and reason for the overpayment and that repayment is required. States must also maintain information regarding uncollected overpayments as provided under paragraph (a)(13)(v) of this section, to enable the State to recover those overpayments if the individual subsequently becomes a recipient. In cases involving fraud, States must make every effort to recover the overpayment, regardless of the amount.

(14) For Medicaid eligibility only, pursuant to section 402(a)(37) of the Act:

(i) An assistance unit will be deemed to be receiving AFDC, but only for the purposes of this paragraph, for a period of nine months after the last month the family actually received aid if the loss of AFDC eligibility was solely because a member of the unit was no longer eligible due to the 4 and 12 month time limitations to have the $30 and one-third or the $30 disregard in paragraph (a)(11)(ii)(B) applied to his or her earned income. At State option, an additional period of Medicaid coverage for up to six months may be provided when the assistance unit would be eligible during such additional period to receive AFDC if the $30 and one-third or the $30 disregards were applied to the assistance unit's earned income.

(ii) An assistance unit which ceased to receive AFDC prior to October 1, 1984 because a member of the unit was no longer eligible due to the 4 month time limitation for the $30 and one-third disregard is eligible to receive extended Medicaid coverage in accordance with paragraph (a)(14)(i) of this section beginning with the month of application under the following conditions:

(*A*) The unit applies for Medicaid no later than the end of the sixth month after the month in which final regulations implementing section 402(a)(37) of the Act are published;

(*B*) The unit demonstrates, to the satisfaction of the State that it is one that, if the $30 and one-third disregard had been applied, would have been continuously eligible for AFDC (without regard to section 402(a)(37) of the Act) from the time the unit ceased to receive AFDC to the time the unit applies for Medicaid; and

(*C*) The unit fully discloses in its application for Medicaid any health insurance coverage in effect for members of the assistance unit.

(iii) Medicaid coverage for an assistance unit which ceased to receive AFDC prior to October 1, 1984 will begin with the month the unit applies for Medicaid and meets the conditions set forth in paragraph (a)(14)(ii) of this section.

(b) *Federal financial participation; General.* (1) Federal participation will be available in financial assistance payments made on the basis that (after application of policies governing the allowable reserve, disregard or setting aside of income and resources), all income of the needy individual, together with the assistance payment, do not exceed the State's defined standard of assistance, and available resources of the needy individuals do not exceed the limits under the State plan.

(2) Federal participation is available within the maximums specified in the Federal law, when the payments do not exceed the amount determined to be needed under the statewide standard, and are made in accordance with the State method for determining the amount of the payments, as specified in § 233.31 for AFDC and in §§ 233.24 and 233.25 for OAA, AB, APTD, and AABD.

(3) Federal participation is available in financial assistance payments made on the basis of the need of the individual. This basis may include consideration of needy persons living in the same home with the recipient when such other persons are within the State's policy as essential to his well-being. Persons living in the home who are "essential to the well-being of the recipient," as specified in the State plan, will govern as the basis for Federal participation (see Guides and Recommendations). When the State includes persons living outside the home or persons not in need, Federal participation is not available for that portion of financial assistance payments attributable to such persons, and the State's claims must, therefore, identify the amounts of any such nonmatchable payments.

(4) For all assistance programs except AFDC, Federal participation is available for supplemental payments in the retrospective budgeting system.

(c) *Federal financial participation in vendor payments for home repairs.* With respect to expenditures made after December 31, 1967, expenditures to a maximum of $500 are subject to Federal financial participation at 50 percent for repairing the home owned by an individual who is receiving aid or assistance (other than Medical Assistance for the Aged) under a State plan for OAA, AFDC, AB, APTD, or AABD if:

(1) Prior to making the expenditures the agency determined that: (i) The home is so defective that continued occupancy is unwarranted; (ii) unless repairs are made the recipient would need to move to rental quarters; and (iii) the rental cost of quarters for the recipient (including the spouse living with him in such home and any other individual whose needs were considered in determining the recipient's need) would exceed (over a period of 2 years) the repair costs needed to make such home habitable together with other costs attributable to continued occupancy of such home.

(2) No expenditures for repair of such home were made previously pursuant to a determination as described in paragraph (c)(1) of this section. This does not preclude more than one payment made at the time repairs are made pursuant to the determination, e.g., separate payments to the roofer, the electrician, and the plumber.

(3) Expenditures for home repairs are authorized in writing by a responsible agency person, records show the eligible person in whose behalf the home repair expenditure was made, and there is sufficient evidence that the home repair was performed.

[34 FR 1394, Jan. 29, 1969]

EDITORIAL NOTE: For FEDERAL REGISTER citations to § 233.20, see the List of CFR Sections Affected in the Finding Aids section of this volume.

EFFECTIVE DATE NOTE: Paragraph (a)(13)(v) was added to § 233.20 at 47 FR 5678, Feb. 5, 1982. The effectiveness of this paragraph is pending OMB approval. The agency will publish a document in the FEDERAL REGISTER when approval is obtained.

§ 233.21 Budgeting methods for OAA, AB, APTD, and AABD.

(a) *Requirements for State plans.* A State plan for OAA, AB, APTD, and AABD shall specify if assistance payments shall be computed using a prospective budgeting system or a retrospective budgeting system. A State electing retrospective budgeting shall specify which options it selects and the State plan shall state that it shall meet the requirements in §§ 233.21 through 233.29. Budgeting methods for AFDC are described in §§ 233.31 through 233.37.

(b) *Definitions.* The following definitions apply to §§ 233.21 through 233.29:

(1) "Prospective budgeting" means that the agency shall compute the amount of assistance for a payment month based on its best estimate of income and circumstances which will exist in that month. This estimate shall be based on the agency's reasonable expectation and knowledge of current, past or future circumstances.

(2) "Retrospective budgeting" means that the agency shall compute the amount of assistance for a payment month based on actual income or circumstances which existed in a previous month, the "budget month".

(3) "Budget month" means the fiscal or calendar month from which the agency shall use income or circumstances of the family to compute the amount of assistance.

(4) "Payment month" means the fiscal or calendar month for which an agency shall pay assistance. Payment is based upon income or circumstances in the budget month. In prospective budgeting, the budget month and the payment month are the same. In retrospective budgeting, the payment month follows the budget month and the payment month shall begin within 32 days after the end of the budget month.

(5) "Make an assistance payment." In the context of retrospective budgeting, to make an assistance payment means that the check shall be deposited in the U.S. mail, hand delivered to the recipient, or deposited with an intermediary organization, such as a bank.

(6) "Supplemental payment." In the context of retrospective budgeting, a supplemental payment is a payment which maintains a family during the time it takes for the monthly assistance payment to reflect a change in circumstances or income.

[44 FR 26082, May 4, 1979, as amended at 47 FR 5678, Feb. 5, 1982]

§ 233.22 Determining eligibility under prospective budgeting.

In States which compute the amount of the assistance payment prospectively, the State plan shall provide that the State shall also determine all factors of eligibility prospectively. Thus, the State agency shall establish eligibility based on its best estimate of income and circumstances which will exist in the month for which the assistance payment is made.

[44 FR 26082, May 4, 1979]

§ 233.23 When assistance shall be paid under retrospective budgeting.

(a) A State which uses retrospective budgeting shall specify in its plan that it will make assistance payments within the following time limits to recipients who file a completed report on time, and to those who are not required to file a report. A State shall choose one of two time periods for making assistance payments. The State plan shall provide that payment must be made:

(1) Within 25 days from the close of the budget month; or

(2) Between 25 and 45 days from the close of the budget month.

(b)(1) Where a State makes payments between 25 and 45 days from the close of the budget month, the State plan shall provide that the State will make supplemental payments as provided in § 233.27.

(2) If a State makes payments within 25 days from the close of the budget month, and also makes supplemental payments as provided in § 233.27, the State plan shall so specify.

(c) In States which issue two checks for each payment month, these time periods apply to the first check.

[44 FR 26083, May 4, 1979]

§ 233.24 Retrospective budgeting; determining eligibility and computing the assistance payment in the initial one or two months.

(a) States which make assistance payments within 25 days of the close of the budget month shall determine eligibility and compute the amount of the payment for all recipients prospectively for the initial month of assistance. These States may choose to determine eligibility and compute the payment prospectively for the second month, also.

(b) States which make assistance payments between 25 and 45 days from the close of the budget month shall determine eligibility and compute the amount of the payment prospectively for the initial two months of assistance.

(c) When a person who previously received assistance reapplies during the same month in which a termination became effective, eligibility shall be determined according to paragraph (a) or (b) of this section. However, the amount of the assistance payment for the month of the reapplication shall be computed retrospectively.

[44 FR 26083, May 4, 1979]

§ 233.25 Retrospective budgeting; computing the assistance payment after the initial one or two months.

The State plan shall provide:

(a) After the initial one or two payment months of assistance under § 233.24, the amount of each subsequent month's payment shall be computed retrospectively, i.e., shall be based on earned and unearned income received in the corresponding budget month.

(b) In these subsequent months, other factors of need which affect the amount of the assistance payment may also be based on circumstances in the corresponding budget month, or they may be based on circumstances in the payment month.

(c) For the first month in which retrospective budgeting is used, a State shall not consider income received by the recipient before the date of application. When a person reapplies during the same month in which a termination became effective, the State may consider income received before the date of application.

[44 FR 26083, May 4, 1979]

§ 233.26 Retrospective budgeting; determining eligibility after the initial one or two months.

(a) Under retrospective budgeting there are three options for determining eligibility. The State plan shall specify that eligibility, following the initial one or two months under § 233.24, shall be determined by one of the following methods:

(1) A State may consider all factors, including income retrospectively, i.e., only from the budget month. For example, if a change in circumstances occurs which affects eligibility, e.g., deprivation ceases, the change may be reported at the end of the budget month and assistance shall be terminated for the corresponding payment month. Thus, even if the agency could have terminated assistance earlier than the corresponding payment month, it shall not do so under retrospective determination of eligibility.

(2) A State may consider all factors, including income, prospectively. For example, if deprivation ceases, and the family becomes ineligible, the agency shall immediately take steps to terminate assistance.

(3) A State may use a combination of the options in paragraphs (a) and (b) of this section by considering factors related to earned and unearned income retrospectively and all other factors prospectively. For example, if a change in income makes the family ineligible, the agency shall wait until the corresponding payment month to terminate assistance. On the other hand, if a change of circumstances other than income makes the family ineligible, the agency shall immediately take steps to terminate assistance.

[44 FR 26083, May 4, 1979; 44 FR 29065, May 18, 1979, as amended at 47 FR 47828, Oct. 28, 1982]

§ 233.27 Supplemental payments under retrospective budgeting.

(a) *General requirements.* A State plan which provides for payments between 25 and 45 days from the close of a budget month, shall provide for supplemental payments to eligible recipients who request them. A State plan which provides for payments within 25 days may provide for supplemental payments:

(1) The supplemental payment shall be paid for the month in which it was requested.

(2) The recipient family is eligible for a supplemental payment if its income for the month is less than 80 percent of the amount the State would pay for a similar family with no income. However, this percentage of the amount the State would pay for a similar family with no income may be set between 80 and 100 percent, as specified in the State plan. The supplemental payment equals the difference between the family's income in the payment month and that percentage.

(3) Supplemental payments shall be issued within 5 working days of request.

(b) *How income is treated.* For purposes of supplemental payments, income includes that month's assistance payment and any income received or expected to be received by the recipient, but does not include work-related expenses.

(1) The amount used for the assistance payment shall be the monthly assistance payment without regard to any recoupments made for prior overpayments or adjustments for prior underpayments.

(2) The agency may include as income cash in hand or available in bank accounts. It may also include as income any cash disregarded in determining need or the amount of the assistance payment, but not cash payments that are disregarded by § 233.20(a)(4)(ii), paragraphs (c) on relocation assistance, (d) on educational grants or loans and (g) on payments for certain services.

[44 FR 26083, May 4, 1979, as amended at 51 FR 9205, Mar. 18, 1986]

§ 233.28 Monthly reporting.

(a) State plans specifying retrospective budgeting shall require that recipients with earned income, other than income from self-employment, report that income to the agency monthly. The State may require recipients with unearned income, no income, or income from self-employment to report monthly. The agency shall provide a form for this purpose, which:

(1) Is written in clear simple language;

(2) Specifies the date by which the agency must receive the form and the

consequences of a late or incomplete form, including whether the agency will delay or withhold payment if the form is not returned by the specified date;

(3) Identifies an individual or agency unit the recipient should contact to receive prompt answers to questions about information requested on the form, and provides a telephone number for this purpose;

(4) Includes a statement, to be signed by the recipient, that he or she understands that the information he or she provides may result in changes in assistance, including reduction or termination;

(5) Advises the recipient if supplemental payments are available and the proper procedures for initiating a request; and

(6) Advises the recipient of his or her right to a fair hearing on any decrease or termination of assistance or denial of a supplemental payment.

(b) The agency shall specify the date by which it must receive the monthly report. This date shall be at least 5 days from the end of the budget month and shall also allow the recipient at least 5 days to complete the report.

(c) The agency may consider a monthly report incomplete only if it is unsigned or omits information necessary to determine eligibility or compute the payment amount.

(d) The agency shall provide a stamped, self-addressed envelope for returning the monthly report.

(e) The agency shall make special provisions for persons who are illiterate or have other handicaps so that they cannot complete a monthly report form.

[44 FR 26083, May 4, 1979]

§ 233.29 How monthly reports are treated and what notices are required.

(a) *What happens if a completed monthly report is received on time.* When the agency receives a completed monthly report by the date specified in § 233.28 it shall process the payment. The agency shall notify the recipient of any changes from the prior payment and the basis for its determinations. This notice must meet the requirements of § 205.10(a)(4)(i)(B) of this chapter on adequate notice if the payment is being reduced or assistance is being terminated. This notice must be received by the recipient no later than his or her resulting payment or in lieu of the payment.

(b) *What happens if the completed monthly report is received before the extension deadline.* (1) If the completed monthly report is not received by the date specified in § 233.28, the agency shall send a notice to the recipient. This notice shall inform him or her that the monthly report is overdue or is not complete and that he or she has at least 10 additional days to file. It must inform the recipient that termination may result if that is the agency's policy, if the report is not filed within the extension period. This notice must reach the recipient at least 10 days before the expected payment. However, in States in which the date specified in § 233.28 is within 10 days of the expected payment date, the notice must reach the recipient on or before the expected payment date.

(2) When the report is received within the extension period, the agency may delay payment to the recipient, as follows:

(i) In a State that pays within 25 days of the budget month the payment may be delayed 10 days;

(ii) In a State that pays within 25 to 45 days of the budget month, the payment may not be delayed beyond the 45th day.

(c) *What happens if a monthly report is not received by the end of the extension period.* An agency may terminate assistance if it has not received a report or has received an incomplete report, and the 10 day extension period has expired. If the State decides to terminate assistance, it must send the recipient a notice which meets the requirements of § 205.10(a)(4)(i)(B) on adequate notice.

(d) *How a recipient may delay an adverse action based on a monthly report.* If a recipient's assistance is reduced or terminated based on information in the monthly report, and he or she requests a fair hearing within 10 days, the assistance payment shall be reinstated immediately at the previous month's level pending the hearing decision. The payment shall be made elfective from the date assistance was reduced or terminated.

[44 FR 26084, May 4, 1979]

§ 233.31 Budgeting methods for AFDC.

(a) *Requirements for State plans.* A State plan for AFDC shall specify that all factors of eligibility shall be determined prospectively and the amount of the assistance for any month for all assistance units required to file a monthly report for the month designated as the budget month under the State's retrospective budgeting procedures shall be determined using retrospective budgeting as provided in §§ 233.31-233.37 except as provided in § 233.34. The State plan shall specify whether the State uses prospective or retrospective budgeting to determine the amount of the assistance payments for recipients not required to report monthly. Budgeting methods for OAA, AB, APTD, and AABD are described in §§ 233.21-233.29.

(b) *Definitions.* The following definitions apply to §§ 233.31 through 233.37:

(1) "Prospective budgeting" means that the agency shall determine eligibility (and compute the amount of assistance for the first one or two months) based on its best estimate of income and circumstances which will exist in that month. This estimate shall be based on the agency's reasonable expectation and knowledge of current, past or future circumstances.

(2) "Retrospective budgeting" means that the agency shall compute the amount of assistance for a payment month based on actual income or circumstances which existed in a previous month, the "budget month."

(3) "Budget month" means the fiscal or calendar month from which the agency shall use income or circumstances of the family to compute the amount of assistance.

(4) "Payment month" means the fiscal or calendar month for which an agency shall pay assistance. Payment is based upon income or circumstances in the budget month. In prospective budgeting, the budget month and the payment month are the same. In retrospective budgeting, the payment month follows the budget month.

(5) "Recent work history" means the individual received earned income in any one of the two months prior to the payment month.

[47 FR 5678, Feb. 5, 1982 as amended at 49 FR 35602, Sept. 10, 1984]

§ 233.32 Payment and budget months (AFDC).

A State shall specify in its plan for AFDC the time period covered by the payment (payment month) and the time period used to determine that payment (budget month) and whether it adopts (a) a one-month or two-month retrospective system; and (b) a one-month or two-month prospective system for the initial payment months. If a State elects to have a two-month retrospective system it must also elect a two-month prospective system.

[47 FR 5678, Feb. 5, 1982]

§ 233.33 Determining eligibility prospectively for all payment months (AFDC).

(a) The State plan for AFDC shall provide that the State shall determine all factors of eligibility prospectively for all payment months. Thus, the State agency shall establish eligibility based on its best estimate of income and circumstances which will exist in the month for which the assistance payment is made.

(b) When a IV-A agency receives an official report of a child support collection it shall consider that information as provided in § 232.20(a) of this chapter. (§ 232.20(a) explains the treatment of child support collections.)

[47 FR 5678, Feb. 5, 1982]

§ 233.34 Computing the assistance payment in the initial one or two months (AFDC).

A State shall compute the amount of the AFDC payment for the initial month of eligibility:

(a) Prospectively (except as in paragraphs (b) and (c) of this section); or

(b) Retrospectively if the applicant received assistance (or would have except for the prohibition on payments of less than $10) for the immediately preceding payment month (except where the State pays the second month after application prospectively); or

(c) Retrospectively if:

(1) Assistance had been suspended as defined in paragraph (d) of this section; and

(2) The initial month follows the month of suspension; and

(3) The family's circumstances for the initial month had not changed significantly from those reported in the corresponding budget month, e.g., loss of job.

(d) A State may suspend, rather than terminate, assistance when:

(1) The agency has knowledge of, or reason to believe that ineligibility would be only for one payment month; and

(2) Ineligibility for that one payment month was caused by income or other circumstances in the corresponding budget month.

(e) If the initial month is computed prospectively as in paragraph (a) of this section, the second month shall be prospective if the State elects a 2-month retrospective budgeting system.

[47 FR 5679, Feb. 5, 1982]

§ 233.35 Computing the assistance payment under retrospective budgeting after the initial one or two months (AFDC).

The State plan for AFDC shall provide:

(a) After the initial one or two payment months of assistance under § 233.34, the amount of each subsequent month's payment shall be computed retrospectively, i.e., shall be based on income and other relevant circumstances in the corresponding budget month except as provided in § 233.20(a)(3)(iii). In any month for which an individual will be determined eligible prospectively and will be added to an existing AFDC assistance unit, the State must meet the individual's needs to the same extent it would if the individual were an applicant for AFDC.

(b) Except as provided in § 233.34(b), for the first and second payment month for which retrospective budgeting is used, the State shall not count income from the budget month already considered for any payment month determined prospectively which is not of a continuous nature.

[47 FR 5679, Feb. 5, 1982]

§ 233.36 Monthly reporting (AFDC).

(a) Except as provided in paragraph (b) of this section, a State plan for AFDC shall require each assistance unit whose members have earned income or recent work history, each assistance unit which has income deemed to it from individuals living with the unit who have earned income or a recent work history and, at State option, other assistance units to submit a report form to the agency monthly on:

(1) Budget month income, family composition, and other circumstances relevant to the amount of the assistance payment; and

(2) Any changes in income, resources, or other relevant circumstances affecting continued eligibility which the assistance unit expects to occur in the current month or in future months.

(3) Stepparent's income and alien sponsor's income and resources where appropriate.

(b) A State may exempt categories of recipients otherwise required to report monthly from reporting each month with prior approval by the Secretary if the State can demonstrate that not requiring these cases to file monthly reports is cost effective. The Secretary will grant waivers under this provision for a period up to one year, at the end of which time the State may request an extension of the waiver. A decision by the Secretary not to approve a request for an exemption is not appealable. The plan shall include criteria for assuring (1) that exempted cases are unlikely to incur changes in circumstances from month to month which would impact their eligibility or amount of assistance and (2) that the administrative cost of requiring those categories to report monthly will be greater than the program savings which would accrue.

(c) States shall also direct recipients to report information as defined in paragraph (a)(2) of this section to the agency as they become aware of expected changes rather than waiting to inform the State on the monthly report.

[47 FR 5679, Feb. 5, 1982 as amended at 49 FR 35602, Sept. 10, 1984]

§ 233.37 How monthly reports are treated and what notices are required (AFDC).

(a) *What happens if a completed monthly report is received on time.* When the agency receives a completed monthly report as specified in § 233.36, and if all eligibility conditions are met, it shall process the payment. The agency shall notify the recipient of any changes from the prior payment and the basis for its determinations. This notice must meet the requirements of § 205.10(a)(4)(i)(B) of this chapter on adequate notice if the payment is being reduced or assistance is terminated as a result of information provided in the monthly report. The notice must be mailed to arrive no later than the resulting payment or in lieu of the payment. A recipient has 10 days from the date of the notice to request a hearing in order to receive reinstatement.

(b) *What happens if a completed monthly report is not received by the agency.* An agency may terminate assistance if it has received no report or has received only an incomplete report as defined by the State. In this case, the agency must send the recipient a notice meeting the requirements of § 205.10(a)(4)(i)(B) to arrive not later than the date it would have made payment if the agency had received a completed monthly report on time. If the recipient notifies the agency and files a completed report within 10 days of the date of this notice, the agency must accept the replacement form and make a payment based on the information on the form if the information indicates that the person is still eligible (without the applicable earned income disregards if the State agency determines no good cause exists for failing to file a timely report of earnings). If the recipient is found ineligible or eligible for an amount less than the prior month's payment, the State must promptly notify the recipient of his or her right to a fair hearing and his or her right to have assistance reinstated. A recipient has 10 days from the date of the notice to request a hearing in order to receive reinstatement.

(c) *What happens if a completed monthly report is received but is not timely.* States must specify in their plans a definition of timeliness related to the filing of a monthly report and the number of days an individual has to report changes in earnings which impact eligibility. States must inform recipients what constitutes timeliness and that no disregard of earnings as described in § 233.20(a)(11)(i) and (ii)(B) ($30 and one-third, child care, and work expenses) will be applied to any earnings which are not reported in a timely manner without good cause. The State must provide recipients an opportunity to show good cause for not filing a timely report of earnings. If the State finds good cause, then applicable earned income disregards will be applied in determining payment. If the State does not find good cause, then applicable earned income disregards will not be applied. If the recipient is found ineligible or eligible for an amount less than the prior month's payment, the State must promptly notify the recipient of his or her right to a fair hearing and his or her right to have assistance reinstated. A recipient has 10 days from the date of the notice to request a hearing in order to receive reinstatement.

[47 FR 5679, Feb. 5, 1982]

§ 233.38 Waiver of monthly reporting and retrospective budgeting requirements; AFDC.

(a) States may request waivers of the requirements at §§ 233.31–233.37 to promote compatibility with monthly reporting and budgeting requirements of the Food Stamp Act of 1977 as amended.

(b) The Secretary will not approve requests for waivers unless the information documenting the need for the waiver shows that the waiver would simplify administration of both programs and would not result in a net cost to the Federal government. Approvals for waivers will be for periods up to one year, after which time the State may request an extension of the waiver.

(c) Any decision by the Secretary not to approve a request for a waiver is not appealable.

[49 FR 35602, Sept. 10, 1984]

§ 233.39 Age.

(a) *Condition for plan approval.* A State plan under title I or XVI of the Social Security Act may not impose any age requirement of more than 65 years.

(b) *Federal financial participation.* (1) Federal financial participation is available in financial assistance provided to otherwise eligible persons who were, for any portion of the month for which assistance is paid:

(i) In OAA or AABD with respect to the aged, 65 years of age or over;

(ii) In AFDC, under 18 years of age; or age 18 if a full-time student in a secondary school, or in the equivalent level of vocational or technical training, and reasonably expected to complete the program before reaching age 19.

(iii) In AB or AABD with respect to the blind, any age;

(iv) In APTD or AABD with respect to the disabled, 18 years of age or older.

(2) Federal determination of whether an individual meets the age requirements of the Social Security Act will be made according to the common-law method (under which a specific age is attained the day before the anniversary of birth), unless the State plan specifies that the popular usage method (under which an age is attained on the anniversary of birth), is used.

(3) The State agency may adopt an arbitrary date such as July 1 as the point from which age will be computed in all instances where the month of an individual's birth is not available, but the year can be established.

[36 FR 3866, Feb. 27, 1971. Redesignated and amended at 47 FR 5678, Feb. 5, 1982]

§ 233.40 Residence.

(a) *Condition for plan approval.* A State plan under title I, IV-A, X, XIV, or XVI of the Social Security Act may not impose any residence requirement which excludes any individual who is a resident of the State except as provided in paragraph (b) of this section. For purposes of this section:

(1) A resident of a State is one: (i) Who is living in the State voluntarily with the intention of making his or her home there and not for a temporary purpose. A child is a resident of the State in which he or she is living other than on a temporary basis. Residence may not depend upon the reason for which the individual entered the State, except insofar as it may bear upon whether the individual is there voluntarily or for a temporary purpose; or

(ii) Who, is living in the State, is not receiving assistance from another State, and entered the State with a job commitment or seeking employment in the State (whether or not currently employed). Under this definition, the child is a resident of the State in which the caretaker is a resident.

(2) Residence is retained until abandoned. Temporary absence from the State, with subsequent returns to the State, or intent to return when the purposes of the absence have been accomplished, does not interrupt continuity of residence.

(b) *Exception.* A State plan under title I, X, XIV, or XVI need not include an individual who has been absent from the State for a period in excess of 90 consecutive days (regardless of whether the individual has maintained his or her residence in the State during this period) until he or she has been present in the State for a period of 30 consecutive days (or a shorter period specified by the State) in the case of such individual who has maintained residence in the State during such period of absence or for a period of 90 consecutive days (or a shorter period as specified by the State) in the case of any other such individual. An individual thus excluded under any such plan may not, as a consequence of that exclusion, be excluded from assistance under the State's title XIX plan if otherwise eligible under the title XIX plan (see 42 CFR 436.403).

[45 FR 26962, Apr. 22, 1980]

§ 233.50 Citizenship and alienage.

A State plan under title I (OAA); title IV-A (AFDC); title X (AB); title XIV (APTD); and title XVI (AABD-disabled) of the Social Security Act shall provide that an otherwise eligible individual, dependent child, or a caretaker relative or any other person whose needs are considered in determining the need of the child or relative claiming aid, must be either:

(a) A citizen, or

(b) An alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law, including certain aliens lawfully present in the United States as a result of the application of the following provisions of the Immigration and Nationality Act:

(1) Section 207(c), in effect after March 31, 1980—Aliens Admitted as Refugees.

(2) Section 203(a)(7), in effect prior to April 1, 1980—Individuals who were Granted Status as Conditional Entrant Refugees.

(3) Section 208—Aliens Granted Political Asylum by the Attorney General.

(4) Section 212(d)(5)—Aliens Granted Temporary Parole Status by the Attorney General, or

(c) An alien granted lawful temporary resident status pursuant to section 201, 302, or 303 of the Immigration Reform and Control Act of 1986 (Pub. L. 99-603) who must be either:

(1) A Cuban and Haitian entrant as defined in paragraph (1) or (2)(A) of section 501(e) of Pub. L. 96-422, as in effect on April 1, 1983, or

(2) An adult assistance applicant for OAA, AB, APTD, or AABD, or

(3) An applicant for AFDC who is not a Cuban and Haitian applicant under paragraph (c)(1) of this section who was adjusted to lawful temporary resident status more than five years prior to application.

All other aliens granted lawful temporary or permanent resident status, pursuant to sections 201, 302, or 303 of the Immigration Reform and Control Act of 1986, are disqualified for five years from the date lawful temporary resident status is granted.

[47 FR 5680, Feb. 5, 1982; 47 FR 43383, Oct. 1, 1982, as amended at 52 FR 48689, Dec. 24, 1987 (interim); 53 FR 30433, Aug. 12, 1988 (final); 54 FR 10544, Mar. 14, 1989]

§ 233.51 Eligibility of sponsored aliens.

Definition: Sponsor is any person who, or any public or private agency or organization that executed an affidavit(s) of support or similar agreement on behalf of an alien (who is not the child of the sponsor or the sponsor's spouse) as a condition of the alien's entry into the United States. Paragraphs (a) through (d) of this section apply only to aliens sponsored by individuals and who filed applications for the first time after September 30, 1981. Paragraphs (e) and (f) apply only to aliens sponsored by public or private agencies or organizations with respect to periods after October 1, 1984. A State plan under title IV-A of the Act shall provide that:

(a) For a period of three years following entry for permanent residence into the United States, a sponsored alien who is not exempt under paragraph (g) of this section, shall provide the State agency with any information and documentation necessary to determine the income and resources of the sponsor and the sponsor's spouse (if applicable and if living with the sponsor) that can be deemed available to the alien, and obtain any cooperation necessary from the sponsor.

(b) The income and resources of a sponsor and the sponsor's spouse shall be deemed to be the unearned income and resources of an alien for three years following the alien's entry into the United States:

(1) Monthly income deemed available to the alien from the sponsor and the sponsor's spouse not receiving AFDC or SSI shall be:

(i) The total monthly unearned and earned income of the sponsor and sponsor's spouse reduced by 20 percent (not to exceed $175) of the total of any amounts received by them in the month as wages or salary or as net earnings from self-employment.

(ii) The amount described in paragraph (b)(1)(i) of this section reduced by:

(A) The cash needs standard under the plan in the alien's State of residence for a family of the same size and composition as the sponsor and those other people living in the same household as the sponsor who are or could be claimed by the sponsor as dependents to determine his or her Federal personal income tax liability but whose needs are not taken into account in making a determination under § 233.20 of this chapter;

(B) Any amounts actually paid by the sponsor or sponsor's spouse to people not living in the household who are or could be claimed by them as dependents to determine their Federal personal income tax liability; and

(C) Actual payments of alimony or child support, with respect to individuals not living in the household.

(2) Monthly resources deemed available to the alien from the sponsor and sponsor's spouse shall be the total amount of their resources determined as if they were applying for AFDC in the alien's State of residence, less $1500.

(c) In any case where a person is the sponsor of two or more aliens, the income and resources of the sponsor and sponsor's spouse, to the extent they would be deemed the income and resources of any one of the aliens under the provisions of this section, shall be divided equally among the sponsored aliens.

(d) Income and resources which are deemed to a sponsored alien shall not be considered in determining the need of other unsponsored members of the alien's family except to the extent the income or resources are actually available.

(e) For a period of three years following entry for permanent residence into the United States, any alien who is not exempt under paragraph (g) of this section and has been sponsored by a public or private agency or organization, shall be ineligible for assistance unless the State agency determines (in accordance with paragraph (f)) that the sponsor no longer exists or has become unable to meet the alien's needs.

(f) The State plan shall set forth the criteria the State agency will use in determining whether an agency or organization no longer exists or is unable to meet the alien's needs and the documentation the agency will require of the alien in making such determination. The sponsored alien shall provide the State agency with any information and documentation necessary for such determination and obtain any cooperation necessary from the sponsor.

(g) The provisions of this section shall not apply to any alien who is:

(1) Admitted as a conditional entrant refugee to the United States as a result of the application, of the provisions of section 203(a)(7) (in effect prior to April 1, 1980) of the Immigration and Nationality Act;

(2) Admitted as a refugee to the United States as a result of the application of the provisions of section 207(c) (in effect after March 31, 1980) of the Immigration and Nationality Act;

(3) Paroled into the United States as a refugee under section 212(d)(5) of the Immigration and Nationality Act;

(4) Granted political asylum by the Attorney General under section 208 of the Immigration and Nationality Act;

(5) A Cuban or Haitian entrant, as defined in section 501(e) of the Refugee Education Assistance Act of 1980 (Pub. L. 96-422); or

(6) The dependent child of the sponsor or sponsor's spouse.

(h) The Secretary shall make information necessary to make a determination under this section and supplied under agreement with the Secretary of State and the Attorney General, available upon request to a concerned State Agency.

[47 FR 5680, Feb. 5, 1982; 47 FR 43383, Oct. 1, 1982; 47 FR 47828, Oct. 28, 1982; 49 FR 35602, Sept. 10, 1984]

§ 233.52 Overpayment to aliens.

A State Plan under Title IV-A of the Social Security Act, shall provide that:

(a) Any sponsor of an alien and the alien shall be jointly and severally liable for any overpayment of aid under the State plan made to the alien during the three years after the alien's entry into the United States due to the sponsor's failure to provide correct information under the provisions of § 233.51, except as provided in paragraph (b) of this section.

(b) When a sponsor is found to have good cause or to be without fault (as defined in the State plan) for not providing information to the agency, the sponsor will not be held liable for the overpayment and recovery will not be made from this sponsor.

(c) An overpayment for which the alien or the sponsor and the alien are liable (as described in paragraphs (a) and (b) of this section) shall be repaid to the State or recovered in accordance with § 233.20(a)(13). If the agency is unable to recover the overpayment through this method, funds to reimburse the agency for the overpayment shall be withheld from future payments to which the alien or the alien and the individual sponsor are entitled under:

(1) Any State administered or supervised program established by the Social Security Act, or

(2) Any federally administered cash benefit program established by the Social Security Act.

[47 FR 5680, Feb. 5, 1982 as amended at 49 FR 35603, Sept. 10, 1984]

§ 233.53 Support and maintenance assistance (including home energy assistance) in AFDC.

(a) *General.* Section 2639 of Pub. L. 98-369 provides that, at State option, certain support and maintenance assistance (including home energy assistance) furnished from October 1, 1984, through September 30, 1987 may be excluded from income and resources.

(b) *Definitions.* The following definitions are limited to the support and maintenance assistance provisions of this section.

"Appropriate State agency" means the agency designated by the chief executive officer of the State to handle the State's responsibilities with respect to support and maintenance assistance under paragraph (c) of this section.

"Based on need" means that the assistance is given to or on behalf of an applicant or recipient for the purpose of support and maintenance (including home energy) and meets the criteria established by the State for determining the need for such assistance.

"In kind assistance" means assistance furnished in any form except direct cash payments to an applicant or recipient or direct payments to an applicant or recipient through other financial instruments which are convertible to cash.

"Private, nonprofit organization" means a religious, charitable, educational, or other organization such as described in section 501(c) of the Internal Revenue Code of 1954. (Actual tax exempt certification by IRS is not necessary).

"Rate-of-return entity" means an entity whose revenues are primarily received from the entity's charges to the public for goods or services, and such charges are based on rates regulated by a State or Federal governmental body.

"Support and maintenance assistance" means any assistance designed to meet the expenses of day to day living. Support and maintenance assistance includes home energy assistance. Home energy assistance means any assistance related to meeting the cost of heating or cooling a home. Home energy assistance includes such items as payments for utility service or bulk fuels; assistance in kind such as portable heaters, fans, blankets, storm doors, or other items which help reduce the costs of heating and cooling such as conservation or weatherization materials and services; etc.

(c) *Requirements for State Plans.* If a State elects to exclude from income and resources support and maintenance assistance, the State plan for AFDC must as specified below:

(1) Provide that an appropriate State agency will certify that support and maintenance assistance is based on need (as defined in paragraph (b) of this section), and that such certification will be accepted for purposes of determining eligibility for and the amount of payments under the AFDC program.

(2) Provide that in joint AFDC/SSI households, support and maintenance assistance furnished to the household which is not excluded under this paragraph will be prorated on a reasonable basis to determine the amount provided to the AFDC assistance unit. The State plan must describe the method that will be used to prorate the assistance in these circumstances.

(3) Provide that the types and amount of support and maintenance

assistance that are excluded when received by an AFDC applicant or recipient will also be excluded in determining the income and resources of a parent, stepparent, spouse or alien sponsor whose income is considered available to an AFDC applicant or recipient.

(4) *From October 1, 1984 through September 30, 1987,* provide that the State may exclude from income and resources, support and maintenance assistance (as defined in paragraph (b) of this section) which the appropriate State agency certifies is based on need, if the assistance is furnished by:

(i) A supplier of home heating gas or oil, regardless of whether the assistance is in cash or in kind; or

(ii) A municipal utility providing home energy, regardless of whether the assistance is in cash or in kind; or

(iii) A rate-of-return entity which provides home energy, regardless of whether the assistance is in cash or in kind; or

(iv) A private nonprofit organization, but only if such assistance is in kind.

(5) Provide that, if the State elects to exclude from income and resources any support and maintenance assistance, the State plan must:

(i) Describe the criteria that will be used to determine the need for the assistance;

(ii) Identify the types and amounts of assistance which will be excluded; and

(iii) Provide that any limitations will be made on a reasonable basis.

[51 FR 39533, Oct. 29, 1986]

§ 233.60 Institutional status.

(a) *Federal financial participation.* (1) Federal financial participation under Title I, X, XIV, or XVI of the Social Security Act is not available in payments to or in behalf of any individual who is an inmate of a public institution except as a patient in a medical institution.

(2) (i) Federal financial participation under title X or XIV of the Social Security Act is not available in payments to or in behalf of any individual who is a patient in an institution for tuberculosis or mental diseases.

(ii) Federal financial participation under title XVI of the Social Security Act is not available in payments to or in behalf of any individual who has not attained 65 years of age and who is a patient in an institution for tuberculosis or mental diseases.

(3) For purposes of this paragraph:

(i) Federal financial participation is available in payments for the month in which an individual (if otherwise eligible) became an inmate of a public institution, or a patient in an institution for tuberculosis or mental diseases;

(ii) Whether an institution is one for tuberculosis or mental diseases will be determined by whether its overall character is that of a facility established and maintained primarily for the care and treatment of individuals with tuberculosis or mental diseases (whether or not it is licensed);

(iii) An institution for the mentally retarded is not an institution for mental diseases;

(iv) An individual on conditional release or convalescent leave from an institution for mental diseases is not considered to be a patient in such institution.

(b) *Definitions.* For purposes of Federal financial participation under paragraph (a) of this section:

(1) "Institution" means an establishment which furnishes (in single or multiple facilities) food and shelter to four or more persons unrelated to the proprietor, and in addition, provides some treatment or services which meet some need beyond the basic provision of food and shelter.

(2) "In an institution" refers to an individual who is admitted to participate in the living arrangements and to receive treatment or services provided there which are appropriate to his requirements.

(3) "Public institution" means an institution that is the responsibility of a governmental unit or over which a governmental unit exercises administrative control.

(4) "Inmate of a public institution" means a person who is living in a public institution. An individual is not considered an inmate when:

(i) He is in a public educational or vocational training institution, for purposes of securing education or vocational training, or

(ii) He is in a public institution for a temporary emergent period pending other arrangements appropriate to his needs.

(5) "Medical institution" means an institution which:

(i) Is organized to provide medical care, including nursing and convalescent care;

(ii) Has the necessary professional personnel, equipment, and facilities to manage the medical, nursing, and other health needs of patients on a continuing basis in accordance with accepted standards;

(iii) Is authorized under State law to provide medical care;

(iv) Is staffed by professional personnel who have clear and definite responsibility to the institution in the provision of professional medical and nursing services including adequate and continual medical care and supervision by a physician; sufficient registered nurse or licensed practical nurse supervision and services and nurse aid services to meet nursing care needs; and appropriate guidance by a physician(s) on the professional aspects of operating the facility.

(6) "Institution for tuberculosis" means an institution which is primarily engaged in providing diagnosis, treatment, or care of persons with tuberculosis, including medical attention, nursing care, and related services.

(7) "Institution for mental diseases" means an institution which is primarily engaged in providing diagnosis, treatment or care of persons with mental diseases, including medical attention, nursing care, and related services.

(8) "Patient" means an individual who is in need of and receiving professional services directed by a licensed practitioner of the healing arts toward maintenance, improvement, or protection of health, or alleviation of illness, disability, or pain.

[36 FR 3867, Feb. 27, 1971]

§ 233.70 Blindness.

(a) *State plan requirements.* A State plan under title X or XVI of the Social Security Act must:

(1) Contain a definition of blindness in terms of ophthalmic measurement. The following definition is recommended: An individual is considered blind if he has central visual acuity of 20/200 or less in the better eye with correcting glasses or a field defect in which the peripheral field has contracted to such an extent that the widest diameter of visual field subtends an angular distance of no greater than 20°.

(2) Provide, in any instance in which a determination is to be made whether an individual is blind or continues to be blind as defined under the State plan, that there will be an initial examination or re-examination performed by either a physician skilled in the diseases of the eye or by an optometrist, whichever the individual so selects.

(i) No examination is necessary when both eyes are missing.

(ii) Where an initial eye examination or re-examination is necessary, the physician or optometrist conducting such examination will submit to the State agency a report thereof, on such forms and in such manner, as may be prescribed for such purpose. A determination whether the individual meets the State's definition of blindness under the State plan will be based upon a review of such eye examination report as provided for in paragraph (a)(3) of this section, and other information or additional examination reports as the State deems necessary.

(3) Provide that each initial eye examination report and any subsequent re-examination report will be reviewed by a State reviewing physician skilled in the diseases of the eye (e.g., an ophthalmologist or an eye, ear, nose and throat specialist). Such physician is responsible for making the agency's decision that the applicant or recipient does or does not meet the State's definition of blindness, and for determining if and when reexaminations are necessary in periodic reviews of eligibility, as required in § 206.10(a)(9)(iii) of this chapter.

(b) *Federal financial participation*—(1) *Assistance payments.* Federal financial participation is available in assistance provided to or in behalf of any otherwise eligible person who is blind under the State's title X or XVI plan. Blindness may be considered as continuing until a determination by the reviewing physician establishes the fact that the recipient's vision has improved beyond the State's definition of blindness set forth under its State title of X or XVI plan.

(2) *Administrative expenses.* Federal financial participation is available in any expenditures incident to the eye examination necessary to determine whether an individual is blind.

[36 FR 3867, Feb. 27, 1971, as amended at 40 FR 25819, June 19, 1975]

§ 233.80 Disability.

(a) *State plan requirements.* A State plan under title XIV or XVI of the Social Security Act must:

(1) Contain a definition of permanently and totally disabled, showing that:

(i) "Permanently" is related to the duration of the impairment or combination of impairments; and

(ii) "Totally" is related to the degree of disability.

The following definition is recommended:

"Permanently and totally disabled" means that the individual has some permanent physical or mental impairment, disease, or loss, or combination thereof, this substantially precludes him from engaging in useful occupations within his competence, such as holding a job.

Under this definition:

"Permanently" refers to a condition which is not likely to improve or which will continue throughout the lifetime of the individual; it may be a condition which is not likely to respond to any known therapeutic procedures, or a condition which is likely to remain static or to become worse unless certain therapeutic measures are carried out, where treatment is unavailable, inadvisable, or is refused by the individual on a reasonable basis; "permanently" does not rule out the possibility of vocational rehabilitation or even possible recovery in light of future medical advances or changed prognosis; in this sense the term refers to a condition which continues indefinitely, as distinct from one which is temporary or transient;

"Totally" involves considerations in addition to those verified through the medical findings, such as age, training, skills, and work experience, and the probable functioning of the individual in his particular situation in light of his impairment; an individual's disability would usually be tested in relation to ability to engage in remunerative employment; the ability to keep house or to care for others would be the appropriate test for (and only for) individuals, such as housewives, who were engaged in this occupation prior to the disability and do not have a history of gainful employment; eligibility may continue, even after a period of rehabilitation and readjustment, if the individual's work capacity is still very considerably limited (in comparison with that of a normal person) in terms of such factors as the speed with which he can work, the amount he can produce in a given period of time, and the number of hours he is able to work.

(2) Provide for the review of each medical report and social history by technically competent persons—not less than a physician and a social worker qualified by professional training and pertinent experience—acting cooperatively, who are responsible for the agency's decision that the applicant does or does not meet the State's definition of permanent and total disability. Under this requirement:

(i) The medical report must include a substantiated diagnosis, based either on existing medical evidence or upon current medical examination;

(ii) The social history must contain sufficient information to make it possible to relate the medical findings to the activities of the "useful occupation" and to determine whether the individual is totally disabled, and

(iii) The review physician is responsible for setting dates for reexamination; the review team is responsible for reviewing reexamination reports in conjunction with the social data to determine whether disabled recipients whose health condition may improve continue to meet the State's definition of permanent and total disability.

(3) Provide for cooperative arrangements with related programs, such as vocational rehabilitation services.

(b) *Federal financial participation*—(1) *Assistance payments.* Federal financial participation is available in payments to or in behalf of any otherwise eligible individual who is permanently and totally disabled. Permanent and total disability may be considered as continuing until the review team establishes the fact that the recipient's disability is no longer within the State's definition of permanent and total disability.

(2) *Administrative expenses.* Federal financial participation is available in

any expenditures incident to the medical examinations necessary to determine whether an individual is permanently and totally disabled.

[36 FR 3867, Feb. 27, 1971]

§ 233.90 Factors specific to AFDC.

(a) *State plan requirements.* A State plan under title IV–A of the Social Security Act shall provide that:

[illegible] The determination whether a child has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, or (if the State plan includes such cases) the unemployment of his or her parent who is the principal earner will be made only in relation to the child's natural or adoptive parent, or in relation to the child's stepparent who is married, under State law, to the child's natural or adoptive parent and is legally obligated to support the child under State law of general applicability which requires stepparents to support stepchildren to the same extent that natural or adoptive parents are required to support their children. Under this requirement, the inclusion in the family, or the presence in the home, of a "substitute parent" or "man-in-the-house" or any individual other than one described in this paragraph is not an acceptable basis for a finding of ineligibility or for assuming the availability of income by the State; and

(2) Where it has reason to believe that the home in which a relative and child receiving aid reside is unsuitable because of the neglect, abuse, or exploitation of such child, the State or local agency will:

(i) Bring such condition to the attention of a court, law-enforcement agency, or other appropriate agency in the State, providing whatever data it has with respect to the situation;

(ii) In reporting such conditions, use the same criteria as are used in the State for all other parents and children; and

(iii) Cooperate with the court or other agency in planning and implementing action in the best interest of the child.

(b) *Conditions for plan approval.* (1) A child may not be denied AFDC either initially or subsequently "because of the conditions of the home in which the child resides", or because the home is considered "unsuitable", unless "provision is otherwise made pursuant to a State statute for adequate care and assistance with respect to such child". (Section 404(b) of the Social Security Act.)

(2) An otherwise eligible child who is under the age of 18 years may not be denied AFDC, regardless of whether she attends school (unless she is required to participate in the JOBS program pursuant to § 250.30 and she is assigned to educational activities) or makes satisfactory grades.

(3) A state may elect to include in its AFDC program children age 18 who are full-time students in a secondary school, or in the equivalent level of vocational or technical training, and who may reasonably be expected to complete the program before reaching age 19.

(4)(i) A child may not be denied AFDC either initially or subsequently because a parent or other caretaker relative fails to cooperate with the child support agency in performing any of the activities needed to:

(A) Establish the paternity of a child born out of wedlock; or

(B) Obtain support from a person having a legal duty to support the child.

(ii) Any parent or caretaker relative who fails to so cooperate shall be treated in accordance with § 232.12 of this chapter.

(5) [Reserved]

(6) An otherwise eligible child may not be denied AFDC if a parent is mentally or physically incapacitated as defined in paragraph (c)(1)(iv) of this section.

(c) *Federal financial participation.* (1) Federal financial participation under title IV–A of the Social Security Act in payments with respect to a "dependent child," as defined in section 406(a) of the Act, is available within the following interpretations:

(i) *Needy child deprived by reason of.* The phrase "needy child * * * deprived * * * by reason of" requires that both need and deprivation of parental support or care exist in the individual case. The phrase encompasses the situation of any child who is in need and otherwise eligible, and whose parent—father or mother—either has died, has a physical or mental incapacity, or is continually absent from the home. This interpretation is equally applicable whether the parent was the chief bread winner or devoted himself or herself primarily to the care of the child, and whether or not the parents were married to each other. The determination whether a child has been deprived of parental support or care is made in relation to the child's natural parent or, as appropriate, the adoptive parent or stepparent described in paragraph (a) of this section.

(ii) *Death of a parent.* If either parent of a child is deceased, the child is deprived of parental support or care, and may, if he is in need and otherwise eligible, be included within the scope of the program.

(iii) *Continued absence of the parent from the home.* Continued absence of the parent from the home constitutes the reason for deprivation of parental support or care when the parent is out of the home, the nature of the absence is such as either to interrupt or to terminate the parent's functioning as a provider of maintenance, physical care, or guidance for the child, and the known or indefinite duration of the absence precludes counting on the parent's performance of the function of planning for the present support or care of the child. If these conditions exist, the parent may be absent for any reason, and may have left only recently or some time previously; except that a parent whose absence is occasioned solely by reason of the performance of active duty in the uniformed services of the United States (as defined in section 101(3) of Title 37, United States code) is not considered absent from the home. A parent who is a convicted offender but is permitted to live at home while serving a court-imposed sentence by performing unpaid public work or unpaid community service during the workday is considered absent from the home.

(iv) *"Physical or mental incapacity".* "Physical or mental incapacity" of a parent shall be deemed to exist when one parent has a physical or mental defect, illness, or impairment. The incapacity shall be supported by competent medical testimony and must be of such a debilitating nature as to reduce substantially or eliminate the parent's ability to support or care for the otherwise eligible child and be expected to last for a period of at least 30 days. In making the determination of ability to support, the agency shall take into account the limited employment opportunities of handicapped individuals.

A finding of eligibility for OASDI or SSI benefits, based on disability or blindness is acceptable proof of incapacity for AFDC purposes.

(v) *"Living with [a specified relative] in a place of residence maintained * * * as his * * * own home".* (A) A child may be considered to meet the requirement of living with one of the relatives specified in the Act if his home is with a parent or a person in one of the following groups:

(*1*) Any blood relative, including those of half-blood, and including first cousins, nephews, or nieces, and persons of preceding generations as denoted by prefixes of grand, great, or great-great.

(*2*) Stepfather, stepmother, stepbrother, and stepsister.

(*3*) Person who legally adopt a child or his parent as well as the natural and other legally adopted children of such persons, and other relatives of the adoptive parents in accordance with State law.

(*4*) Spouses of any persons named in the above groups even after the marriage is terminated by death or divorce.

(B) A home is the family setting maintained or in process of being established, as evidenced by assumption and continuation of responsibility for day to day care of the child by the relative with whom the child is living. A home exists so long as the relative exercises responsibility for the care and control of the child, even though either the child or the relative is temporarily absent from the customary family setting. Within this interpretation, the child is considered to be "living with" his relative even though

(*1*) He is under the jurisdiction of the court (e.g., receiving probation services or protective supervision); or

(*2*) Legal custody is held by an agency that does not have physical possession of the child.

(2) Federal financial participation is available in:

(i) Initial payments made on behalf of a child who goes to live with a relative specified in section 406(a)(1) of the Social Security Act within 30 days of the receipt of the first payment, provided payments are not made for concurrent period for the same child in the home of another relative or as foster care under title IV-E;

(ii) Payments made for the entire month in the course of which a child leaves the home of a specified relative, provided payments are not made for a concurrent period for the same child in the home of another relative or as foster care under title IV-E; and

(iii) Payments made to persons acting for relatives specified in section 406(a)(1) of the Act in emergency situations that deprive the child of the care of the relative through whom he has been receiving aid, for a temporary period necessary to make and carry out plans for the child's continuing care and support.

(iv) At State option, (A) payments with respect to a pregnant woman with no other children receiving assistance, and additionally, at State option, (B) payments for the purpose of meeting special needs occasioned by or resulting from pregnancy both for the pregnant woman with no other children as well as for the pregnant woman receiving AFDC. However, for both paragraphs (c)(2)(iv) (A) and (B) of this section it must be medically verified that the child is expected to be born in the month such payments are made or within the three-month period following such month of payment, and who, if such child had been born and was living with her in the month of payment, would be eligible for aid to families with dependent children. Federal financial participation is not available to meet the needs of the unborn child. (Refer to Medicaid regulations at 42 CFR 435.115 for Medicaid coverage of pregnant women.)

(3) Federal financial participation (at the 50 percent rate) is available in any expenses incurred in establishing eligibility for AFDC, including expenses incident to obtaining necessary information to determine the existence of incapacity of a parent or pregnancy of a mother.

[36 FR 3868, Feb. 27, 1971 as amended at 39 FR 34038, Sept. 23, 1974; 40 FR 27156, June 26, 1975; 44 FR 12424, Mar. 7, 1979; 47 FR 5681, Feb. 5, 1982; 47 FR 41114, Sept. 17, 1982; 48 FR 28409, June 21, 1983; 51 FR 9206, Mar. 18, 1986; 52 FR 28824, Aug. 4, 1987; 54 FR 42243, Oct. 13, 1989]

§ 233.100 Dependent children of unemployed parents.

(a) Requirements for State Plans. If a State wishes to provide AFDC for children of unemployed parents, the State plan under title IV-A of the Social Security Act must:

(1) Include a definition of an unemployed parent who is the principal earner which shall apply only to families determined to be needy in accordance with the provisions in § 233.20. Such definition must include any such parent who:

(i) Is employed less than 100 hours a month; or

(ii) Exceeds that standard for a particular month, if the work is intermittent and the excess is of a temporary nature as evidenced by the fact that he or she was under the 100-hour standard for the prior 2 months and is expected to be under the standard during the next month; except that at the option of the State, such definition need not include a principal earner who is unemployed because of participation in a labor dispute (other than a strike) or by reason of conduct or circumstances which result or would result in disqualification for unemployment compensation under the State's unemployment compensation law.

(2) Include a definition of a dependent child which shall include any child of an unemployed parent (as defined by the State pursuant to paragraph (a) (1)of this section) who would be, except for the fact that his parent is not dead, absent from the home, or incapacitated, a dependent child under

the State's plan approved under section 402 of the Act.

(3) Provide for payment of aid with respect to any dependent child (as defined by the State pursuant to paragraphs (a)(2) of this section) when the conditions set forth in paragraphs (a)(3) (i), (ii), (iii), and (vii) of this section are met:

(i) His or her parent who is the principal earner has been unemployed for at least 30 days prior to the receipt of such aid.

(ii) Such parent has not without good cause, within such 30-day period prior to the receipt of such aid, refused a bona fide offer of employment or training for employment. Before it is determined that such parent has refused a bona fide offer of employment or training for employment without good cause, the agency must make a determination that such an offer was actually made. (In the case of offers of employment made through the public employment or manpower agencies, the determination as to whether the offer was bona fide, or whether there was good cause to refuse it, will be made by that office or agency.) The parent must be given an opportunity to explain why such offer was not accepted. Questions with respect to the following factors must be resolved:

(*a*) That there was a definite offer of employment at wages meeting any applicable minimum wage requirements and which are customary for such work in the community;

(*b*) Any questions as to the parent's inability to engage in such employment for physical reasons or because he has no way to get to or from the particular job; and

(*c*) Any questions of working conditions, such as risks to health, safety, or lack of worker's compensation protection.

(iii) Such parent (*a*) has six or more quarters of work (as defined in paragraph (a)(3)(iv) of this section), within any 13-calendar-quarter period ending within 1 year prior to the application for such aid, or (*b*) within such 1-year period, received unemployment compensation under an unemployment compensation law of a State or of the United States, or was qualified under the terms of paragraph (a)(3)(v) of this section) for such compensation under the State's unemployment compensation law.

(iv) A "quarter of work" with respect to any individual means a period (of 3 consecutive calendar months ending on March 31, June 30, September 30, or December 31) in which he or she received earned income of not less than $50 (or which is a "quarter of coverage" as defined in section 213(a)(2) of the Act), or in which he or she participated in a community work experience program under section 409 of the Act or the work incentive program established under title IV-C of the Act.

(v) An individual shall be deemed "qualified" for unemployment compensation under the State's unemployment compensation law if he would have been eligible to receive such benefits upon filing application, or he performed work not covered by such law which, if it had been covered, would (together with any covered work he performed) have made him eligible to receive such benefits upon filing application.

(vi)(A) The "parent who is the principal earner" means, in the case of any child, whichever parent, in a home in which both parents of such child are living, earned the greater amount of income in the 24-month period the last month of which immediately precedes the month in which an application is filed for aid under this part on the basis of the unemployment of a parent. If the State cannot secure primary evidence of earnings for this period, the State shall designate the principal earner, using the best evidence available. The earnings of each parent are considered in determining the principal earner egardless of when their relationship began. The principal earner so defined remains the principal earner for each consecutive month for which the family receives such aid on the basis of such application. This requirement applies to both new applicants and current AFDC unemployed parent families who were eligible and receiving aid prior to October 1, 1981.

(B) If both parents earned an identical amount of income (or earned no income) in such 24-month period, the State shall designate which parent shall be the principal earner.

(vii) The parent who is the principal earner (unless exempt under § 240.14) has met the requirements for participation in an employment search program under Part 240 of this chapter.

(4) Provide for entering into cooperative arrangements with the State agency responsible for administering or supervising the administration of vocational education to assure maximum utilization of available public vocational education services and facilities in the State to encourage the retraining of individuals capable of being retrained.

(5) Provide for the denial of such aid to any such dependent child or the relative specified in section 406(a)(1) of the Act with whom such child is living,

(i) If and for so long as such child's parent, unless exempt under § 224.20, is not currently registered for the work incentive program or if exempt under § 224.20(b)(6), is not currently registered with a public employment office in the State, except that in a State with an approved JOBS plan under § 250.20, such child's parent, unless exempt under § 250.30(b), must be currently participating (or available for participation) in a program under Part 250, or, if he is exempt under § 250.30(b)(5), must be registered with a public employment office in the State, and

(ii) With respect to any week for which such child's parent qualifies for unemployment compensation under an unemployment compensation law of the State or of the United States but refuses to apply for or accept such unemployment compensation, and

(iii) If the parent who is the principal earner (unless exempt under § 240.14) fails to meet the requirements for participation in a program of employment search established under Part 240 of this chapter.

(6) Provide that within 30 days after the receipt of such aid, unemployed principal earners will be certified for participation in the Work Incentive program under Part 224 or, if the State IV-A agency has an approved JOBS plan pursuant to § 250.20, will participate or apply for participation in a program under Part 250 unless the program is not available in the area where the parent is living.

(b) [Reserved]

(c) *Federal financial participation.* (1) Federal financial participation is available in payments authorized in accordance with the State plan approved under section 402 of the Act as aid to families with dependent children with respect to a child.

(i) Who meets the requirements of section 406(a)(2) of the Act;

(ii) Who is living with any of the relatives specified in section 406(a)(1) of the Act in a place of residence maintained by one or more of such relatives as his (or their) own home;

(iii) Who has been deprived of parental support or care by reason of the fact that his or her parent who is the principal earner is employed less than 100 hours a month; or exceeds that standard for a particular month if his or her work is intermittent and the excess is of a temporary nature as evidenced by the fact that he or she was under the 100-hour standard for 2 prior months and is expected to be under the standard during the next month.

(iv) Whose parent who is the principal earner (*a*) has six or more quarters of work (as defined in paragraph (a)(3)(iv) of this section) within any 13-calendar-quarter period ending within 1 year prior to the application for such aid, (*b*) within such 1-year period, received unemployment compensation under an unemployment compensation law of a State or of the United States, or was qualified (under the terms of paragraph (a)(3)(v) of this section) for such compensation under the State's unemployment compensation law; and

(v) Whose parent who is the principal earner (*a*) is currently registered with the WIN program unless exempt or is registered with the public employment office in the State if exempt from WIN registration under § 224.20(b)(6) or because there is no WIN program in which he can effectively participate; and (*b*) has not refused to apply for or accept unemployment compensation with respect to any week for which such child's parent qualifies for unemployment compensation under an unemployment compensation law of a State or of the United States.

(2) The State may not include in its claim for Federal financial participation payments made as aid under the plan with respect to a child who meets the conditions set forth in paragraph (c)(1) of this section, where such payments were made.

(i) For any part of the 30-day period specified in paragraph (a)(3)(i) of this section;

(ii) For such 30-day period if during that period the parent refused without good cause a bona fide offer of employment or training for employment;

(iii) For any period beginning with the 31st day after receipt of aid, if and for as long as no action is taken during the period to certify the parent for participation in the Work Incentive program under Part 224, or if the State IV-A agency has an approved JOBS plan pursuant to § 250.20, no action is taken during the period to undertake appropriate steps directed toward the participation of such parent in a program under Part 250; and

(iv) For any part of the sanction period imposed under § 240.22 (for failure to meet the requirements for participation in the employment search program).

[34 FR 1146, Jan. 24, 1969, as amended at 36 FR 13604, July 22, 1971; 38 FR 18549, July 12, 1973; 38 FR 26608, Sept. 24, 1973; 46 FR 46769, Sept. 21, 1981; 47 FR 5681, Feb. 5, 1982; 47 FR 41114, Sept. 17, 1982; 47 FR 43383, Oct. 1, 1982; 48 FR 28409, June 21, 1983; 51 FR 9206, Mar. 18, 1986; 54 FR 42244, Oct. 13, 1989]

§ 233.106 Denial of AFDC benefits to strikers.

(a) *Condition for plan approval.* A State plan under title IV-A of the Social Security Act must:

(1) Provide that participation in a strike shall not constitute good cause to leave, or to refuse to seek or accept, employment

(2)(i) Provide for the denial of AFDC benefits to any family for any month in which any caretaker relative with whom the child is living is, on the last day of such month, participating in a strike; and

(ii) Provide that no individual's needs shall be included in determining the amount of aid payable for any month to a family under the plan if, on the last day of such month, such individual is participating in a strike.

(b) *Definitions.* (1) The State must define "strike" by using the National Labor Relations Board definition (29 U.S.C. 142(2)) or another definition of the term that is currently in State law.

(2) The State must define the term "participating in a strike."

(3) For purposes of paragraph (a)(2)(i) of this section, "caretaker relative" means any natural or adoptive parent.

[47 FR 5682, Feb. 5, 1982]

§ 233.110 Foster care maintenance and adoption assistance.

(a) *State plan requirements.* A State plan under title IV-A of the Social Security Act must provide that the State has in effect a plan approved under Part E, title IV of the Social Security Act, and operates a foster care maintenance and adoption assistance program in conformity with such a plan.

[51 FR 9206, Mar. 18, 1986]

§ 233.120 Emergency assistance to needy families with children.

(a) *Requirements for State plans.* A State plan under Title IV, Part A, of the Social Security Act, providing for emergency assistance to needy families with children must:

(1) Specify the eligibility conditions imposed for the receipt of emergency assistance. These conditions may be more liberal than those applicable to other parts of the plan. (See paragraph (b)(1) of this section for scope of Federal financial participation.)

(2) Specify if migrant workers with families will be included and, if emergency assistance will not be available to them Statewide, the part or parts of the State in which it will be provided.

(3) Specify the emergency needs that will be met, whether mass feeding or clothing distribution are included, and the methods of providing payments, medical care, and other remedial care.

(4) Specify which of the following services will be provided: Information, referral, counseling, securing family shelter, child care, legal services, and

any other services that meet needs attributable to the emergency or unusual crisis situations.

(5) Provide that emergency assistance will be given forthwith.

(b) *Federal financial participation.* Beginning with the effective date of approval of the amendment to the State plan for AFDC which provides for emergency assistance to needy families with children pursuant to section 406(e) of the Act:

(1) Federal financial participation is available for emergency assistance to or on behalf of a needy child under the age of 21 and any other member of the household in which he is living if:

(i) Such child is (or, within 6 months prior to the month in which such assistance is requested, has been) living with any of the relatives specified in section 406(a)(1) of the Act in a place of residence maintained by one or more of such relatives as his or their own home,

(ii) Such child is without resources immediately accessible to meet his needs,

(iii) The emergency assistance is necessary to avoid destitution of such child or to provide living arrangements for him in a home, and

(iv) His destitution or need for living arrangements did not arise because he or such relative refused without good cause to accept employment or training for employment.

(2) The rate of Federal financial participation in expenditures during a quarter as emergency assistance in accordance with the provisions of an approved State plan is 50 percent of the total amount of such expenditures which are (i) in the form of money payments, payments in kind, or such other payments as the State agency specifies, including loans and vendor payments, or medical or remedial care recognized under State law, with respect to or on behalf of individuals described in paragraph (b)(1) of this section; (ii) for administration, including costs incurred in determining eligibility, in the payment process, and for other related administrative activities; and (iii) for the following services provided to individuals described in paragraph (b)(1) of this section, directly by staff of the agency, or by purchase from other sources: Information, referral, counseling, securing family shelter, child care, legal services, and any other services that meet needs attributable to the emergency or unusual crisis situations.

(3) Federal matching is available only for emergency assistance which the State authorizes during one period of 30 consecutive days in any 12 consecutive months, including payments which are to meet needs which arose before such 30-day period or are for such needs as rent which extend beyond the 30-day period. Another condition for Federal participation is that the State has a reasonable method of determining the value of goods in kind or services provided for emergency assistance.

[34 FR 393, Jan. 10, 1969, as amended at 39 FR 5316, Feb. 12, 1974]

§ 233.145 Expiration of medical assistance programs under titles I, IV-A, X, XIV and XVI of the Social Security Act.

(a) Under the provisions of section 121(b) of Pub. L. 89-97, enacted July 30, 1965, no payment may be made to any State under title I, IV-A, X, XIV or XVI of the Social Security Act for aid or assistance in the form of medical or any other type of remedial care for any period after December 31, 1969. However, these provisions do not affect the availability of Federal financial participation in the cost of medical or remedial care furnished under title IV-A of the Act (pursuant to sections 403(a)(5) and 406(e)) of the Act, as emergency assistance to needy families with children (see § 233.120 of this part), subject to the provisions of paragraph (c)[1] of this section. Federal financial participation in vendor payments for medical care and services is not otherwise available except under title XIX of the Act.

(b) Under the provisions of section 4(c) of Pub. L. 92-223, enacted December 28, 1971, and the provisions of section 292 of Pub. L. 92-603, enacted October 30, 1972:

(1) In the case of any State which on January 1, 1972, had in effect a State

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[1] See notice published Aug. 29, 1973 (38 FR 23337).

plan approved under title XIX of the Social Security Act, section 1121 of the Act authorizing payments under title I, X, XIV, or XVI of the Act for assistance in the form of institutional services in intermediate care facilities is rescinded; and

(2) In the case of any State which on January 1, 1972, did not have in effect a State plan approved under title XIX of the Act, Federal financial participation is available in assistance in the form of institutional services in intermediate care facilities pursuant to section 1121 of the Act and under the provisions of § 234.130 of this chapter until the first day of the first month after January 1, 1972, that the State has in effect a State plan approved under title XIX.

(c)(1) Under the provisions of section 249D of Pub. L. 92-603, enacted October 30, 1972, Federal matching is not available for any portion of any payment by any State under titles I, IV-A, X, XIV, or XVI of the Social Security Act for or on account of any medical or any other type of remedial care provided by an institution to any individual as an inpatient thereof, in the case of any State which has a plan approved under title XIX of such Act, if such care is (or could be provided, under a State plan approved under title XIX of such Act, by an institution certified under such title XIX. The effective date of this proposed provision will be the date of publication of the final regulation in the FEDERAL REGISTER.

(2) For purposes of this paragraph,

(i) An institution (see § 233.60(b)(1) of this chapter) is considered to provide medical or remedial care if it provides any care or service beyond room and board because of the physical or mental condition (or both) of its inpatients;

(ii) An inpatient is an individual who is living in an institution which provides medical or remedial care and who is receiving care or service beyond room and board because of his physical or mental condition (or both).

(iii) Federal financial participation is not available for any portion of the payment for care of an inpatient. It is immaterial whether such payment is made as a vendor payment or as a money payment or other cash assistance payment. It is also immaterial whether the payment is divided into components, such as separate amounts or payments for room and board, and for care or services beyond room and board, or whether the payment is considered to meet "basic" needs or "special" needs. If, however, a money payment (or protective payment) is made to an individual who is living in an institution, and such payment does not exceed a reasonable rate for room, board and laundry for individuals not living in their own homes, and no additional payment is made for such individual's care in the institution, Federal financial participation is available in the money payment (or protective payment) since the individual may spend the funds at his discretion and obtain room and board at the place of his choice.

(iv) Federal financial participation is available in cash assistance payments to meet the needs of an inpatient for specific medical services, such as dental care or prescription drugs, which generally are not delivered in an institutional setting and in fact are not provided by the institution to the inpatient, provided that such services are not available to the individual under the State's approved title XIX plan.

[38 FR 26379, Sept. 20, 1973, as amended at 38 FR 32912, Nov. 29, 1973]

PART 234—FINANCIAL ASSISTANCE TO INDIVIDUALS

Sec.
234.11 Assistance in the form of money payments.
234.60 Protective, vendor, and two-party payments for dependent children.
234.70 Protective payments for the aged, blind, or disabled.
234.75 Rent payments to public housing agencies.
234.120 Federal financial participation.
234.130 Assistance in the form of institutional services in intermediate care facilities.

AUTHORITY: Secs. 402, 403, 406 and 1102 of the Social Security Act (42 U.S.C. 602, 603, 606, and 1302); sec. 201 of Pub. L. 100-485, 102 Stat 2359.

§ 234.11 Assistance in the form of money payments.

(a) Federal financial participation is available in money payments made under a State plan under title I, IV-A, X, XIV, or XVI of the Social Security Act to eligible families and individuals. Money payments are payments in cash, checks, or warrants immediately redeemable at par, made to the grantee or his legal representative with no restrictions imposed by the agency on the use of funds by the individual.

(b) [Reserved]

[36 FR 22238, Nov. 23, 1971, as amended at 51 FR 9206, Mar. 18, 1986]

§ 234.60 Protective, vendor and two-party payments for dependent children.

(a) *State plan requirements.* (1) If a State plan for AFDC under title IV-A of the Social Security Act provides for protective, vendor and two-party payments for cases other than failure to participate in WIN, employment search, or Community Work Experience Programs (CWEP), or failure by the caretaker relative to meet the eligibility requirements of § 232.11 or § 232.12 of this chapter, it must meet the requirements in paragraphs (a) (2) through (11) of this section. In addition, the plan may provide for protective, vendor, and two-party payments at the request of the recipient as provided in paragraph (a)(14) of this section.

(2)(i) Methods will be in effect to identify children whose relatives have demonstrated such an inability to manage funds that payments to the relative have not been or are not currently used in the best interest of the child. This means that the relative has misused funds to such an extent that allowing him or her to manage the AFDC grant is a threat to the health or safety of the child.

(ii) States will establish criteria to determine if mismanagement exists. Under this provision, States may elect to use as one criterion a presumption of mismanagement based on a recipient's nonpayment of rent.

(iii) Under State agency procedures, the recipient shall be notified whenever a creditor requests a protective, vendor, or two-party payment for mismangement on the basis of non-payment of bills.

(iv) The recipient shall be notified by the agency of a decision not to use a protective, vendor, or two-party payment if such payment has been requested by a creditor.

(v) A statement of the specific reasons that demonstrate the need for making protective, vendor, and two-party payments must be placed in the file of the child involved.

(3) Criteria will be established to identify the circumstances under which protective, vendor, or two-party payments will be made in whole or in part to:

(i) Another individual who is interested in or concerned with the welfare of the child or relative; or

(ii) A person or persons furnishing food, living accommodations or other goods, services, or items to or for the child, relative, or essential person.

(4) Procedures will be established for making protective, vendor, or two-party payments. Under this provision, part of the payment may be made to the family and part may be made to a protective payee or to a vendor, or part may be made in the form of two-party payments, i.e., checks which are drawn jointly to the order of the recipient and the person furnishing goods, services, or items and negotiable only upon endorsement by both the recipient and the other person.

(5)—(6) [Reserved]

(7) Standards will be established for selection:

(i) Of protective payees, who are interested in or concerned with the recepient's welfare, to act for the recipient in receiving and managing assistance, with the selection of a protective payee being made by the recipient, or with his participation and consent, to the extent possible. If it is in the best interest of the recipient for a staff member of a private agency, of the public welfare department, or of any other appropriate organization to serve as a protective payee, such selection will be made preferably from the staff of an agency or that part of the agency providing protective services for families; and the public welfare department will employ such additional staff as may be necessary to provide protective payees. The selection will not include: The executive head of the agency administering public assistance; the person determining financial eligibility for the family; special investigative or resource staff; or staff handling fiscal processes related to the recipient; or landlords, grocers, or other vendors of goods, services, or items dealing directly with the recipient.

(ii) Of such persons providing goods, services, or items with the selection of such persons being made by the recipient, or with his participation and consent, to the extent possible.

(8) The agency will undertake and continue special efforts to develop greater ability on the part of the relative to manage funds in such manner as to protect the welfare of the family.

(9) Review will be made as frequently as indicated by the individual's circumstances, and at least once every 12 months, of:

(i) The need for protective, vendor, and two-party payments; and

(ii) The way in which a protective payee's responsibilities are carried out.

(10) Provision will be made for termination of protective payments, or payments to a person furnishing goods or services, as follows:

(i) When relatives are considered able to manage funds in the best interest of the child, there will be a return to money payment status.

(ii) When it appears that need for protective, vendor, or two-party payments will continue or is likely to continue beyond 2 years because all efforts have not resulted in sufficiently improved use of assistance in behalf of the child, judicial appointment of a guardian or other legal representative will be sought and such payments will terminate when the appointment has been made.

(11)(i) Opportunity for a fair hearing pursuant to § 205.10 will be given to any individual claiming assistance in relation to the determination:

(A) That a protective, vendor, and two-party payment should be made or continued.

(B) As to the payee selected.

(ii) In cases where the agency has elected the option to presume mismanagement based on a recipient's nonpayment of rent pursuant to paragraph (a)(2)(ii), the agency may also elect the option to provide the opportunity for a fair hearing pursuant to § 205.10 either before or after the manner or form of payment has been changed for these cases.

(12) In cases where an individual is sanctioned for failure to participate in WIN, employment search, CWEP, or JOBS, the State plan must provide that when protective or vendor payments are made pursuant to § 224.52(a)(1), § 238.22, § 240.22(a)(1), § 240.22(b)(1) and § 250.34(d) of this chapter, only paragraphs (a)(7), (a)(9)(ii), and (a)(11)(i) and (ii) of this section will be applicable. Under these circumstances, when protective payments are made, the entire payment will be made to the protective payee; and when vendor payments are made, at least the greater part of the payment will be through this method. However, if after making all reasonable efforts, the State agency is unable to locate an appropriate individual to whom protective payments can be made, the State may continue to make payments on behalf of the remaining members of the assistance unit to the sanctioned caretaker relative. Provision will be made for termination of protective payments, or payments to a person furnishing goods or services, with return to money payment status when adults who refused training, employment, or participation in employment search without good cause either accept training, employment, or employment search or agree to do so. In the case of continuing refusal of the relative to participate, payments will be continued for the children in the home in accordance with this paragraph.

(13) For cases in which a caretaker relative fails to meet the eligibility requirements of § 232.11 or § 232.12 of this chapter by failing to assign rights to support or cooperate in determining paternity and securing support, the State plan must provide that only the requirements of paragraphs (a)(7) and (9)(ii) of this section will be applicable. For such cases the entire amount of the assistance payment will be in the form of protective or vendor payments. These protective or vendor payments will be terminated, with return

to money payment status, only upon compliance by the caretaker relative with the eligibility requirements of §§ 232.11 and 232.12 of this chapter. However, if after making all reasonable efforts, the State agency is unable to locate an appropriate individual to whom protective payments can be made, the State may continue to make payments on behalf of the remaining members of the assistance unit to the sanctioned caretaker relative.

(14) If the plan provides for protective, vendor, or two-party payments:

(i) The State may use any combination of protective, vendor, or two-party payments (at the request of the recipient),

(ii) The request must be in writing from the recipient to whom payment would otherwise be made in an unrestricted manner and must be recorded or retained in the case file, and

(iii) The restriction will be discontinued promptly upon the written request of the recipient who initiated it.

(b) *Federal financial participation.* Federal financial participation is available in payments which otherwise qualify as money payments with respect to an eligible dependent child, but which are made as protective, vendor or two-party payments under this section. Payrolls must identify protective, vendor, or two-party payments either by use of a separate payroll for these cases or by using a special identifying code or symbol on the regular payroll. The payment must be supported by an authorization of award through amendment of an existing authorization document for each case or by preparation of a separate authorization document. In either instance, the authorization document must be a formal agency record signed by a responsible agency official, showing the name of each eligible child and relative, the amount of payment authorized and the name of the protective, vendor or two-party payee.

[37 FR 9025, May 4, 1972, as amended at 37 FR 12202, June 20, 1972; 40 FR 27156, June 26, 1975; 45 FR 20480, Mar. 28, 1980; 47 FR 5682, Feb. 5, 1982; 48 FR 28410, June 21, 1983; 49 FR 35603, Sept. 10, 1984; 51 FR 9206, Mar. 18, 1986; 54 FR 42244, Oct. 13, 1989]

§ 234.70 Protective payments for the aged, blind, or disabled.

(a) *State plan requirements.* If a State plan for OAA, AB, APTD, or AABD under the Social Security Act includes provisions for protective payments, the State plan must provide that:

(1) Methods will be in effect to determine that needy individuals have, by reason of physical or mental condition, such inability to manage funds that making payment to them would be contrary to their welfare; such methods to include medical or psychological evaluations, or other reports of physical or mental conditions including observation of gross conditions such as extensive paralysis, serious mental retardation, continued disorientation, or severe memory loss.

(2) There will be responsibility to assure referral to social services for appropriate action to protect recipients where problems and needs for services and care of the recipients are manifestly beyond the ability of the protective payee to handle. (See paragraph (a)(5) of this section.)

(3) Standards will be established for selection of protective payees who are interested in or concerned with the individual's welfare, to act for the individual in receiving and managing assistance, with the selection of a protective payee being made by the individual, or with his participation and consent, to the extent possible. If it is in the best interest of the individual for a staff member of a private agency, of the public welfare department, or of any other appropriate organization to serve as a protective payee, such selection will be made preferably from the staff of an agency or that part of the agency providing protective services for families or for the disabled or aged group of which the recipient is a member; and such staff of the public welfare department will be utilized only to the extent that the department has adequate staff for this purpose. The selection will not include: The executive head of the agency administering public assistance; the person determining financial eligibility for the individual; special investigative or resource staff, or staff handling

fiscal processes related to the recipient; or landlords, grocers, or other vendors of goods or services dealing directly with the recipient—such as the proprietor, administrator or fiscal agent of a nursing home, or social care, medical or nonmedical institution, except for the superintendent of a public institution for mental diseases or a public institution for the mentally retarded, or the designee of such superintendent, when no other suitable protective payee can be found and there are appropriate staff available to assist the superintendent in carrying out the protective payment function.

(4) Protective payments will be made only in cases in which the assistance payment, with other available income, meets all the needs of the individual, using the State's standards for assistance for the pertinent program, not standards for protective payment cases only.

(5) The agency will undertake and continue special efforts to protect the welfare of such individuals and to improve, to the extent possible, their capacity for self-care and to manage funds.

(6) Reconsideration of the need for protective payments and the way in which a protective payee's responsibilities are carried out will be as frequent as indicated by the individual's circumstances and at least every 6 months.

(7) Provision will be made for appropriate termination of protective payments as follows:

(i) When individuals are considered able to manage funds in their best interest, there will be a return to money payment status.

(ii) When a judicial appointment of a guardian or other legal representative appears to serve the best interest of the individual, such appointment will be sought and the protective payment will terminate when the appointment has been made.

(8) Opportunity for a fair hearing will be given to any individual claiming assistance in relation to the determination that a protective payment should be made or continued, and in relation to the payee selected.

(b) *Federal financial participation.* Federal financial participation is available for payments, which otherwise qualify as money payments with respect to a needy individual, but which are made to a protective payee under paragraph (a)(3) of this section. The payment must be supported by an authorization of award through amendment of an existing authorization document for such case or by preparation of a separate authorization document. In either instance, the authorization document must be a formal agency record signed by a responsible agency official showing the name of each eligible individual, the amount of payment authorized and the name of the protective payee. Payrolls must identify protective payment cases either by use of a separate payroll for these cases or by using a special identifying code or symbol on the regular payroll.

[34 FR 1323, Jan. 28, 1969]

§ 234.75 Rent payments to public housing agencies.

At the option of a State, if its plan approved under title I, X, XIV, or XVI of the Social Security Act so provides, Federal financial participation under such title is available in rent payments made directly to a public housing agency on behalf of a recipient or a group or groups of recipients of OAA, AB, APTD, or AABD. Such Federal financial participation is available in rent payments only to the extent that they do not exceed the amount included for rent under the State's standard of assistance or the amount of rent due under applicable law, whichever is less.

[38 FR 26380, Sept. 20, 1973]

§ 234.120 Federal financial participation.

Federal financial participation is available in assistance payments made under a State plan under title I, IV-A, X, XIV, or XVI of the Social Security Act to any family or individual for periods beginning with the month in which they meet all eligibility conditions under the plan and in which an application has been received by the agency. Such assistance payments include:

(a) Money payments (titles I, IV-A, X, XIV, and XVI, see § 234.11 of this chapter);

(b) Protective and vendor payments for dependent children (title IV-A, see § 234.60 of this chapter);

(c) Protective payments for the aged, blind, or disabled (titles I, X, XIV, and XVI, see § 234.70 of this chapter);

(d) AFDC foster care payments (title IV-A, see § 233.110 of this chapter);

(e) Vendor payments for institutional services in intermediate care facilities (titles I, X, XIV, and XVI), but only in a State that did not, as of January 1, 1972, have an approved plan under title XIX of the act, and only until such State has such a plan in effect (see § 234.130 of this chapter);

(f) Emergency assistance to needy families with children (title IV-A, see § 233.120 of this chapter);

(g) Vendor payments for home repairs (titles I, IV-A, X, XIV, and XVI, see § 233.20(c) of this chapter); and

(h) Rent payments to public housing agencies (titles I, X, XIV, and XVI, see § 234.75 of this chapter).

[38 FR 26380, Sept. 20, 1973]

§ 234.130 Assistance in the form of institutional services in intermediate care facilities.

(a) *Applicability and State plan requirements.* A State which, on January 1, 1972, did not have in effect a State plan approved under title XIX of the Social Security Act may provide assistance under title I, X, XIV, or XVI of the Act in the form of institutional services in intermediate care facilities as authorized under title XI of the Act, until the first day of the first month (occurring after January 1, 1972) that such State does have in effect a State plan approved under title XIX of the Act. In any State which may provide such assistance as authorized under title XI of the Act, a State plan under title I, X, XIV, or XVI of the Act which includes such assistance must:

(1) Provide that such benefits will be provided only to individuals who:

(i) Are entitled (or would, if not receiving institutional services in intermediate care facilities, be entitled) to receive assistance, under the State plan, in the form of money payments; and

(ii) Because of their physical or mental condition (or both) require living accommodations and care which, as a practical matter, can be made available to them only through institutional facilities; and

(iii) Do not have such an illness, disease, injury, or other condition as to require the degree of care and treatment which a hospital or skilled nursing home (as that term is employed in title XIX) is designed to provide.

(2) Provide that, in determining financial eligibility for benefits in the form of institutional services in intermediate care facilities, available income will be applied, first for personal and incidental needs including clothing, and that any remaining income will be applied to the costs of care in the intermediate care facility.

(3) Provide methods of administration that include:

(i) Placing of responsibility, within the State agency, with one or more staff members with sufficient staff time exclusive of other duties to direct and guide the agency's activities with respect to services in intermediate care facilities, including arrangements for consultation and working relationships with the State standard-setting authority and State agencies responsible for mental health and for mental retardation;

(ii) In relation to authorization of benefits, provisions for evaluation by a physician of the individual's physical and mental condition and the kinds and amounts of care he requires; evaluation by the agency worker of the resources available in the home, family and community; and participation by the recipient in determining where he is to receive care, except that in the case of services being provided in a Christian Science Sanatorium, certification by a qualified Christian Science practitioner that the individual meets the requirements specified in paragraphs (a)(1) (ii) and (iii) of this section may be substituted for the evaluation by a physician;

(iii) Provisions for redetermination at least semiannually that the individual is properly a recipient of intermediate care.

(4) Provide for regular, periodic review and reevaluation no less often than annually (by or on behalf of the State agency administering the plan and in addition to the activities described in paragraph (a)(3) of this section) of recipients in intermediate care facilities to determine whether their current physical and mental conditions are such as to indicate continued placement in the intermediate care facility, whether the services actually rendered are adequate and responsive to the conditions and needs identified, and whether a change to other living arrangements, or other institutional facilities (including skilled nursing homes) is indicated. Such reviews must be followed by appropriate action on the part of the State agency administering the plan. They must be conducted by or under the supervision of a physician with participation by a registered professional nurse and other appropriate medical and social service personnel not employed by or having a financial interest in the facility, except that, in the case of recipients who have elected care in a Christian Science sanatorium, review by a physician or other medical personnel is not required.

(5) Provide that all services with respect to social and related problems which the agency makes available to applicants and recipients of assistance under the plan will be equally available to all applicants for and recipients of benefits in the form of institutional services in intermediate care facilities.

(6) Specify the types of facilities, however described, that will qualify under the State plan for participation as intermediate care facilities, and provide for availability to the Department of Health and Human Services, upon request of (i) copies of the State's requirements for licensing of such facilities, (ii) any requirements imposed by the State in addition to licensing and to definition of intermediate care facilities, and (iii) a description of the manner in which such requirements are applied and enforced including copies of agreements or contracts, if any, with the licensing authority for this purpose.

(7) Provide for and describe methods of determining amounts of vendor payments to intermediate care facilities which systematically relate amounts of the payment to the kinds, levels, and quantities of services provided to the recipients by the institutions and to the cost of providing such services.

(b) *Other requirements.* Except when inconsistent with purposes of section 1121 of the Act or contrary to any provision therein, any modification, pursuant thereto, of an approved State plan shall be subject to the same conditions, limitations, rights, and obligations as obtained with respect to such approved State plan. Included specifically among such conditions and limitations are the provisions of titles I, X, XIV, and XVI relating to payments to or care in behalf of any individual who is an inmate of a public institution (except as a patient in a medical institution).

(c) *Federal financial participation.* (1) Federal financial participation is available under section 1121 of the Act in vendor payments for institutional services provided to individuals who are eligible under the respective State plan and who are residents in intermediate care facilities. The rate of participation is the same as for money payments under the respective title or, if the State so elects, at the rate of the Federal medical assistance percentage as defined in section 1905(b) of the Act. Such Federal financial participation ends on the date specified in paragraph (c)(2) of this section, or 12 months after the date when the State first has in effect a State plan approved under title XIX of the Act, whichever is later.

(2) For the period from January 1, 1972, to the date on which a determination is made under the provisions of 42 CFR 449.33 as to a facility's eligibility to receive payments for intermediate care facility services under the medical assistance program, title XIX of the Act, but not later than 12 months following the effective date of these regulations, Federal financial participation in payments for such services under title XIX is governed by the provisions of this section, applied to State plans under title XIX.

(d) *Definition of terms.* For purposes of section 1121 of the Social Security Act, the following definitions apply:

(1) *Institutional services.* The term, "institutional services", means those items and services provided by or under the auspices of the institution which contribute to the health, comfort, and well-being of the residents thereof; except that the term, "institutional services," does not include allowances for clothing and incidental expenses for which money payments to recipients are made under the plan, nor does it include medical care, in a form identifiable as such and separable from the routine services of the facility, for which vendor payments may be made under a State plan approved under title XIX.

(2) *Distinct part of an institution.* A "distinct part" of an institution is defined as a part which meets the definition of an intermediate care facility and the following conditions:

(i) *Identifiable unit.* The "distinct part" of the institution is an entire unit such as an entire ward or contiguous wards, wing, floor, or building. It consists of all beds and related facilities in the unit and houses all residents, except as hereafter provided, for whom payment is being made for intermediate care. It is clearly identified and is approved, in writing, by the agency applying the definition of intermediate care facility herein.

(ii) *Staff.* Appropriate personnel are assigned and work regularly in the unit. Immediate supervision of staff is provided in the unit at all time by qualified personnel.

(iii) *Shared facilities and services.* The distinct part may share such central services and facilities as management services, building maintenance and laundry, with other units.

(iv) *Transfers between distinct parts.* In a facility having distinct parts devoted to skilled nursing home care and intermediate care, which facility has been determined by the appropriate State agency to be organized and staffed to provide services according to individual needs throughout the institution, nothing herein shall be construed to require transfer of an individual within the institution when in the opinion of the individual's physician such transfer might be harmful to the physical or mental health of the individual.

(3) *Intermediate care facility.* An intermediate care facility is an institution or a distinct part thereof which:

(i) Is licensed, under State law to provide the residents thereof, on a regular basis, the range or level of care and services as defined in paragraph (d)(4) of this section, which is suitable to the needs of individuals who:

(*a*) Because of their physical or mental limitations or both, require living accommodations and care which, as a practical matter, can be made available to them only through institutional facilities, and

(*b*) Do not have such an illness, disease, injury, or other condition as to require the degree of care and treatment which a hospital or skilled nursing home (as that term is employed in title XIX is designed to provide:

(ii) Does not provide the degree of care required to be provided by a skilled nursing home furnishing services under a State plan approved under title XIX:

(iii) Meets such standards of safety and sanitation as are applicable to nursing homes under State law; and

(iv) Regularly provides a level of care and service beyond board and room.

The term "intermediate care facility" also includes a Christian Science sanatorium operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Mass.

(4) *Range or level of care and services.* The range or level of care and services suitable to the needs of individuals described in paragraph (d)(3)(i) of this section is to be defined by the State agency. The following items are recommended as a minimum.

(i) *Admission, transfer, and discharge of residents.* The admission, transfer, and discharge of residents of the facility are conducted in accordance with written policies of the institution that include at least the following provisions.

(*a*) Only those persons are accepted into the facility whose needs can be met within the accommodations and services the facility provides;

(*b*) As changes occur in their physical or mental condition, necessitating service or care not regularly provided by the facility, residents are transferred promptly to hospitals, skilled nursing homes, or other appropriate facilities;

(*c*) The resident, his next of kin, and the responsible agency if any, are consulted in advance of the discharge of any resident, and casework services or other means are utilized to assure that adequate arrangements exist for meeting his needs through other resources.

(ii) *Personal care and protective services.* The types and amounts of protection and personal service needed by each resident of the facility are a matter of record and are known to all staff members having personal contact with the resident. At least the following services are provided.

(*a*) There is, at all times, a responsible staff member actively on duty in the facility, and immediately accessible to all residents, to whom residents can report injuries, symptoms of illness, or emergencies, and who is immediately responsible for assuring that appropriate action is taken promptly.

(*b*) Assistance is provided, as needed by individual residents, with routine activities of daily living including such services as help in bathing, dressing, grooming, and management of personal affairs such as shopping.

(*c*) Continuous supervision is provided for residents whose mental condition is such that their personal safety requires such supervision.

(iii) *Social services.* Services to assist residents in dealing with social and related problems are available to all residents through one or more caseworkers on the staff of the facility; and/or, in the case of recipients of assistance, through caseworkers on the staff of the assistance agency; or through other arrangements.

(iv) *Activities.* Activities are regularly available for all residents, including social and recreational activities involving active participation by the residents, entertainment of appropriate frequency and character, and opportunities for participation in community activities as possible and appropriate.

(v) *Food service.* At least three meals a day, constituting a nutritionally adequate diet, are served in one or more dining areas separate from sleeping quarters, and tray service is provided for residents temporarily unable to leave their rooms.

(vi) *Special diets.* If the facility accepts or retains individuals in need of medically prescribed special diets, the menus for such diets are planned by a professionally qualified dietitian, or are reviewed and approved by the attending physician, and the facility provides supervision of the preparation and serving of the meals and their acceptance by the resident.

(vii) *Health services.* Whether provided by the facility or from other sources, at least the following services are available to all residents:

(*a*) Immediate supervision of the facility's health services by a registered professional nurse or a licensed practical nurse employed full-time in the facility and on duty during the day shift except that, where the State recognizes and describes two or more distinct levels of institutions as intermediate care facilities such personnel are not required in any level that serves only individuals who have been determined by their physicians not to be in need of such supervision and whose need for such supervision is reviewed as indicated, and at least quarterly;

(*b*) Continuing supervision by a physician who sees the resident as needed and in no case, less often than quarterly;

(*c*) Under direction by the resident's physician and (where applicable in accordance with (d)(4)(vii)(*a*) of this section), general supervision by the nurse in charge of the facility's health services, guidance, and assistance for each resident in carrying out his personal health program to assure that preventive measures, treatments, and medications prescribed by the physician are properly carried out and recorded;

(*d*) Arrangements for services of a physician in the event of an emergency when the resident's own physician cannot be reached;

(*e*) In the presence of minor illness and for temporary periods, bedside care under direction of the resident's physician including nursing service provided by, or supervised by, a registered professional nurse or a licensed practical nurse;

(*f*) An individual health record for each resident including;

(*1*) The name, address, and telephone number of his physician;

(*2*) A record of the physician's findings and recommendations in the preadmission evaluation of the individual's condition and in subsequent reevaluations and all orders and recommendations of the physician for care of the resident;

(*3*) All symptoms and other indications of illness or injury brought to the attention of the staff by the resident, or from other sources, including the date, time, and action taken regarding each.

(viii) *Living accommodations.* Space and furnishings provide each resident clean, comfortable, and reasonably private living accommodations with no more than four residents occupying a room, with individual storage facilities for clothing and personal articles, and with lounge, recreation and dining areas provided apart from sleeping quarters.

(ix) *Administration and management.* The direction and management of the facility are such as to assure that the services required by the residents are so organized and administered that they are, in fact, available to the residents on a regular basis and that this is accomplished efficiently and with consideration for the objective of providing necessary care within a homelike atmosphere. Staff are employed by the facility sufficient in number and competence, as determined by the appropriate State agency, to meet the requirements of the residents.

[35 FR 8990, June 10, 1970, as amended at 39 FR 2220, Jan. 17, 1974; 39 FR 8918, Mar. 7, 1974]

PART 235—ADMINISTRATION OF FINANCIAL ASSISTANCE PROGRAMS

Sec.
235.40 [Reserved]
235.50 State plan requirements for methods of personnel administration.
235.60 Federal financial participation (FFP) for State and local training.
235.61 Definition of terms.
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235.63 Conditions for FFP.
235.64 FFP rates, and activities and costs matchable as training expenditures.
235.65 Activities and costs not matchable as training expenditures.
235.66 Sources of State funds.
235.70 Prompt notice to child support agency.
235.110 Fraud.
235.111 Pre-eligibility fraud detection measures.

AUTHORITY: Secs. 2, 3, 402, 403, 1002, 1003, 1402, 1403, 1602, and 1603 of the Social Security Act (42 U.S.C. 302, 303, 602, 603, 1202, 1203, 1302, 1352, 1353, 1382 (Note), 1383 (Note)), and Part XXIII of Pub. L. 97-35, 45 Stat. 843.

§ 235.40 [Reserved]

§ 235.50 State plan requirements for methods of personnel administration.

(a) A State plan for financial assistance programs under title I, IV-A, X, XIV, or XVI (AABD) of the Social Security Act must provide that methods of personnel administration will be established and maintained in public agencies administering or supervising the administration of the program in conformity with the Standards for a Merit System of Personnel Administration, 5 CFR Part 900, Subpart F, which incorporates the Intergovernmental Personnel Act Merit Principles (Pub. L. 91-648, section 2, 84 Stat. 1909), prescribed by the Office of Personnel Management pursuant to section 208 of the Intergovernmental Personnel Act of 1970 as amended.

(Secs. 2, 402, 1002, 1102, 1402, and 1602, Social Security Act, as amended; 74 Stat. 987 as amended, 45 Stat. 627 as amended, 49 Stat. 645 as amended, 49 Stat. 647 as amended, 64 Stat. 555 as amended, 76 Stat. 198 as amended; 42 U.S.C. 302, 602, 1202, 1302, 1352, and 1382 Note)

[45 FR 25398, Apr. 15, 1980]

§ 235.60 Federal financial participation (FFP) for State and local training.

Sections 235.61 through 235.66 contain (a) State plan requirements for training programs and (b) conditions for Federal financial participation (FFP) for training costs under the

State plans. These sections apply to the State plans for the financial assistance programs in all jurisdictions under title I, IV-A, X, XIV, or XVI (AABD) of the Social Security Act.

(Secs. 2, 3, 402, 403, 1002, 1003, 1402, 1403, 1602, and 1603, Social Security Act as amended; 49 Stat. 620 as amended, 49 Stat. 621, as amended, 49 Stat. 627, as amended, 49 Stat. 628 as amended, 49 Stat. 645 as amended, 49 Stat. 646, as amended, 49 Stat. 647, as amended, 64 Stat. 555, as amended, 76 Stat. 198, as amended, 76 Stat. 200, as amended; 42 U.S.C. 302, 303, 602, 603, 1202, 1203, 1302, 1352, 1353, 1382, and 1383)

[45 FR 29833, May 6, 1980]

§ 235.61 Definition of terms.

For purposes of §§ 235.60–235.66:

"Act" means the Social Security Act, as amended.

"A grant to an educational institution" means payments to an educational institution for services rendered under a time limited agreement between the State agency and the eligible educational institution which provides for the training of State or local agency employees or persons preparing for employment with the State or local agency.

"A training program" is the method through which the State agency carries out a plan of educational and training activities to improve the operation of its programs.

(a) *"Initial in-service training"* means a period of intensive, task-oriented training to prepare new employees to assume job responsibilities.

(b) *"Continuing training"* means an on-going program of training planned to enable employees to: (1) Reinforce their basic knowledge and develop the required skills for the performance of specific functions, and (2) acquire additional knowledge and skill to meet changes such as enactment of new legislation, development of new policies, or shifts in program emphasis.

(c) *"Full-time training"* means training that requires employees to be relieved of all responsibility for performance of current work to participate in a training program.

(d) *"Part-time training"* means training that allows employees to continue full time in their jobs or requires only partial reduction of work activities to participate in a training program outside of the State or local agency.

(e) *"Long-term training"* means training for eight consecutive work weeks or longer.

(f) *"Short-term training"* means training for less than eight consecutive work weeks.

"FFP or Federal financial participation" means the Federal government's share of expenditures made by a State or local agency under a training program.

"Fringe benefits" means the employer's share of premiums for industrial compensation, employee's retirement, unemployment compensation, health insurance, and similar expenses.

"Persons preparing for employment" means individuals who are not yet employed by the State or local agency, but who have received financial assistance from the State agency for training, and have made a legally binding commitment with the State or local agency for future employment under the conditions of these regulations.

"Stipend" means the basic living allowance paid to a student.

(Secs. 2, 3, 402, 403, 1002, 1003, 1402, 1403, 1602, and 1603, Social Security Act as amended; 49 Stat. 620 as amended, 49 Stat. 621, as amended, 49 Stat. 627, as amended, 49 Stat. 628 as amended, 49 Stat. 645 as amended, 49 Stat. 646, as amended, 49 Stat. 647, as amended, 64 Stat. 555, as amended, 76 Stat. 198, as amended, 76 Stat. 200, as amended; 42 U.S.C. 302, 303, 602, 603, 1202, 1203, 1302, 1352, 1353, 1382, and 1383)

[45 FR 29833, May 6, 1980]

§ 235.62 State plan requirements for training programs.

A State plan under title I, IV-A, X, XIV, or XVI (AABD) of the Act must provide for a training program for agency personnel. The training program must:

(a) Include initial in-service training for newly appointed staff, and continuing agency training opportunities to improve the operation of the program. The training program may also include short-term and long-term training at educational institutions through grants to institutions or by direct financial assistance to students enrolled in institutions who are agency employees or persons preparing for employment with the State or local agency;

(b) Be related to job duties performed or to be performed by the persons trained, and be consistent with the program objectives of the agency; and

(c) Be described in an annual training plan prepared prior to the beginning of the fiscal year. Copies of the training plan shall be made available upon request to the Regional Office of Family Assistance for review by the Federal staff.

(Secs. 2, 3, 402, 403, 1002, 1003, 1402, 1403, 1602, and 1603, Social Security Act as amended; 49 Stat. 620 as amended, 49 Stat. 621, as amended, 49 Stat. 627, as amended, 49 Stat. 628 as amended, 49 Stat. 645 as amended, 49 Stat. 646, as amended, 49 Stat. 647, as amended, 64 Stat. 555, as amended, 76 Stat. 198, as amended, 76 Stat. 200, as amended; 42 U.S.C. 302, 303, 602, 603, 1202, 1203- 1302, 1352, 1353, 1382, and 1383)

[45 FR 29833, May 6, 1980, as amended at 46 FR 29264, June 1, 1981]

§ 235.63 Conditions for FFP.

(a) *Who may be trained.* FFP is available only for training provided personnel employed in all classes of positions, volunteers, and persons preparing for employment by the State or local agency administering the program.

(b) *When FFP is available.* FFP is available for personnel employed and persons preparing for employment by the State or local agency provided the following conditions are met, and with the following limitations:

(1) Employees in full-time, long-term training make a commitment to work in the agency for a period of time equal to the period for which financial assistance is granted. A State agency may exempt an employee from fulfilling this commitment only if failure to continue in employment is due to death, disability, employment in a financial assistance program in a public assistance agency in another State, or other emergent circumstances determined by the single State agency head to be valid for exemption;

(2) An employee retains his or her rights and benefits in the agency while on full-time, long-term training leave;

(3) Persons preparing for employment are selected by the State agency and accepted by the school;

(4) Persons preparing for employment are pursuing educational programs approved by the State agency;

(5) Persons preparing for employment are committed to work for State or local agency for a period of time at least equal to the period for which financial assistance is granted if employment is offered within 2 months after training is completed;

(6) The State or local agency offers the individual preparing for employment a job upon completion of training unless precluded by merit system requirements, legislative budget cuts, position freezes, or other circumstances beyond the agency's control; and if unable to offer employment, releases the individual from his or her commitment;

(7) The State agency keeps a record of the employment of persons trained. If the persons are not employed by the State or local agency, the record specifies the reason for non-employment;

(8) The State agency evaluates the training programs; and

(9) Any recoupment of funds by the State from trainees failing to fulfill their commitment under this section shall be treated as a refund and deducted from total training costs for the purpose of determining net costs for FFP.

(c) *Grants to educational institutions.* FFP is available in payments for services rendered under grants to educational institutions provided all of the following conditions are met:

(1) Grants are made for the purpose of developing, expanding, or improving training for personnel employed by the State or local agency or preparing for employment by the State or local agency administering the program. Grants are made for an educational program (curriculum development, classroom instruction, field instruction, or any combination of these) that is directly related to the agency's program. Grants are made for not more than 3 years, but may be renewed, subject to the conditions of this section;

(2) Grants are made to educational institutions and programs that are accredited by the appropriate institutional accrediting body recognized by the U.S. Commissioner of Education. When a specialized program within the institution for which there is a specialized accrediting body is used, that program must be accredited by or have pre-accreditation status from that body. (Part 149 of this title explains the requirements and procedures for obtaining recognition as an accrediting agency or association. Lists of currently recognized accrediting bodies are published in the FEDERAL REGISTER periodically. *See also Nationally Recognized Accrediting Agencies and Associations* published by the Office of Education);

(3) The State agency has written policies establishing conditions and procedures for such grants;

(4) Each grant describes objectives in terms of how the educational program is related to the financial assistance programs and how it is designed to meet the State or local agency's manpower needs; and

(5) An evaluation of the educational program funded by each grant is made no later than the close of the second year of the grant. The evaluation shall be conducted by representatives from the educational institution and the State agency to determine whether conditions and objectives described in the grant are being met. If the educational program does not meet these conditions and objectives, payment shall be terminated no later than the close of the second year of the grant.

(Secs. 2, 3, 402, 403, 1002, 1003, 1402, 1403, 1602, and 1603, Social Security Act as amended; 49 Stat. 620 as amended, 49 Stat. 621, as amended, 49 Stat. 627, as amended, 49 Stat. 628 as amended, 49 Stat. 645 as amended, 49 Stat. 646, as amended, 49 Stat. 647, as amended, 64 Stat. 555, as amended, 76 Stat. 198, as amended, 76 Stat. 200, as amended; 42 U.S.C. 302, 303, 602, 603, 1202, 1203, 1302, 1352, 1353, 1382, and 1383)

[45 FR 29834, May 6, 1980]

§ 235.64 FFP rates, and activities and costs matchable as training expenditures.

Under title I, X, XIV, or XVI (AABD) of the Act, FFP is available at the rate of 75 percent, and under title IV-A effective October 1, 1981, FFP is available at the rate of 50 percent for the following costs:

(a) Salaries, fringe benefits, travel and per diem for:

(1) Staff development personnel (including support staff) assigned full time to training functions and;

(2) Staff development personnel assigned part time to training functions to the extent time is spent performing such functions.

(b) For agency training sessions, FFP is available for:

(1) Salaries, fringe benefits, travel and per diem for employees in initial in-service training of at least one week;

(2) Travel and per diem for employees in agency training sessions away from the employee's work site, or in institutes, seminars or workshops related to the job and sponsored by professional organizations;

(3) Salaries, fringe benefits, travel and per diem for experts outside the agency engaged to develop or conduct special programs; and

(4) Costs of space, postage, teaching supplies, purchase or development of teaching material and equipment, and costs of maintaining and operating the agency library as an essential resource to the agency's training program.

(c) For training and education outside of the agency, FFP is available for:

(1) Salaries, fringe benefits, dependency allowance, travel, tuition, books, and educational supplies for employees in full-time, long-term training programs (with no assigned agency duties);

(2) Salaries, fringe benefits, travel, tuition, books, and educational supplies for employees in full-time, short-term training programs of four or more consecutive work weeks;

(3) Travel, per diem, tuition, books and educational supplies for employees in short-term training programs of less than four consecutive work weeks, or part-time training programs; and

(4) Stipends, travel, tuition, books and educational supplies for persons preparing for employment with the State or local agency.

(d) FFP is available for payments to educational institutions, as described in § 235.63(c) for salaries, fringe benefits, and travel of instructors, clerical assistance, teaching materials and equipment.

(Secs. 2, 3, 402, 403, 1002, 1003, 1102, 1402, 1403, 1602, and 1603, Social Security Act as amended; 49 Stat. 620 as amended, 49 Stat. 621, as amended, 49 Stat. 627, as amended, 49 Stat. 628 as amended, 49 Stat. 645 as amended, 49 Stat. 646, as amended, 49 Stat. 647, as amended, 64 Stat. 555, as amended, 76 Stat. 198, as amended, 76 Stat. 200, as amended, 95 Stat. 843; 42 U.S.C. 302, 303, 602, 603, 1202, 1203, 1302 and Part XXIII of Pub. L. 97-35, 1352, 1353, 1382, and 1383)

[45 FR 29834, May 6, 1980, as amended at 47 FR 5683, Feb. 5, 1982]

§ 235.65 Activities and costs not matchable as training expenditures.

FFP is not available for the following expenditures as training costs; however, the expenditures described in this section may be matched as administrative costs, if conditions for such matching are met:

(a) Salaries of supervisors (day-to-day supervision of staff is not a training activity); and

(b) Employment of students on a temporary basis, such as in the summertime.

(Secs. 2, 3, 402, 403, 1002, 1003, 1402, 1403, 1602, and 1603, Social Security Act as amended; 49 Stat. 620 as amended, 49 Stat. 621, as amended, 49 Stat. 627, as amended, 49 Stat. 628 as amended, 49 Stat. 645 as amended, 49 Stat. 646, as amended, 49 Stat. 647, as amended, 64 Stat. 555, as amended, 76 Stat. 198, as amended, 76 Stat. 200, as amended; 42 U.S.C. 302, 303, 602, 603, 1202, 1203, 1302, 1352, 1353, 1382, and 1383)

[45 FR 29835, May 6, 1980]

§ 235.66 Sources of State funds.

(a) *Public funds.* Public funds may be considered as the State's share in claiming Federal reimbursement where the funds:

(1) Are appropriated directly to the State or local agency, or transferred from another public agency (including Indian tribes) to the State or local agency and under its administrative control, or certified by the contributing public agency as representing expenditures eligible for FFP under §§ 235.60–235.66;

(2) Are not used to match other Federal funds; and

(3) Are not federal funds, or are Federal funds authorized by Federal law to be used to match other Federal funds.

(b) *Private funds.* Funds donated from private sources may be considered as the State's share in claiming Federal reimbursement only where the funds are:

(1) Transferred to the State or local agency and under its administrative control;

(2) Donated without any restriction which would require their use for the training of a particular individual or at particular facilities or institutions; and

(3) Do not revert to the donor's facility or use.

(Secs. 2, 3, 402, 403, 1002, 1003, 1402, 1403, 1602, and 1603, Social Security Act as amended; 49 Stat. 620 as amended, 49 Stat. 621, as amended, 49 Stat. 627, as amended, 49 Stat. 628 as amended, 49 Stat. 645 as amended, 49 Stat. 646, as amended, 49 Stat. 647, as amended, 64 Stat. 555, as amended, 76 Stat. 198, as amended, 76 Stat. 200, as amended; 42 U.S.C. 302, 303, 602, 603, 1202, 1203, 1302, 1352, 1353, 1382, and 1383)

[45 FR 29835, May 6, 1980]

§ 235.70 Prompt notice to child support agency.

(a) A State plan under title IV-A of the Social Security Act must provide for prompt notice to the State or local child support agency designated pursuant to section 454(3) of the Social Security Act whenever:

(1) Aid is furnished to a child who has been deserted or abandoned by a parent, to the parent(s) with whom the child lives, or to a pregnant woman under § 233.90(c)(2)(iv), or

(2) Any of the persons in paragraph (a)(1) of this section is deemed to be a recipient of aid under § 233.20(a)(3)(viii)(D).

(b) In this section:

(1) "Aid" means Aid to Families with Dependent Children, or AFDC Foster Care.

(2) "Prompt notice" means written notice including a copy of the AFDC case record, or all relevant information as prescribed by the child support agency. The prompt notice shall be provided within two working days of the furnishing of aid or the determina-

tion that an individual is a recipient under § 233.20(a)(3)(viii)(D). The title IV-A agency and the child support agency may agree to provide notice immediately upon the filing of an application for assistance.

(3) "Furnish" means the date on which cash is given to the family, a check or warrant is mailed to the family, a deposit is made in a bank for the family, or other similar circumstances in which an assistance payment is made to the family, or the date on which individuals are determined to be recipients under § 233.20(a)(3)(viii)(D).

(4) "A child who has been deserted or abandoned by a parent" means any child whose eligibility for AFDC is based on continued absence of a parent from the home, and includes a child born out of wedlock without regard to whether the paternity of such child has been established.

(Sec. 1102, Social Security Act, as amended, 49 Stat. 647, as amended; 42 U.S.C. 1302 and Part XXIII of Pub. L. 97-35, 95 Stat. 843)

[47 FR 5683, Feb. 5, 1982]

§ 235.110 Fraud.

State plan requirements: A State plan under title I, IV-A, X, XIV, or XVI of the Social Security Act must provide:

(a) That the State agency will establish and maintain:

(1) Methods and criteria for identifying situations in which a question of fraud in the program may exist, and

(2) Procedures developed in cooperation with the State's legal authorities for referring to law enforcement officials situations in which there is valid reason to suspect that fraud has been practiced.

The definition of fraud for purposes of this section will be determined in accordance with State law.

(b) For methods of investigation of situations which there is a question of fraud, that do not infringe on the legal rights of persons involved and are consistent with the principles recognized as affording due process of law.

(c) For the designation of official position(s) responsible for referral of situations involving suspected fraud to the proper authorities.

(Sec. 1102, 49 Stat. 647; 42 U.S.C. 1302)

[36 FR 3869, Feb. 27, 1971]

§ 235.111 Pre-eligibility fraud detection measures.

(a) *State plan requirement.* A State plan under title IV, part A of the Social Security Act must contain a description of the verification measures to detect fraudulent applications for AFDC prior to the establishment of eligibility for such aid.

(b) *Definition.* For purposes of this section, "verification measures" are actions taken by a State agency (including actions taken by fraud personnel assigned to the initial application unit to investigate applicants suspected of committing fraud):

(1) To confirm information provided by an applicant to support his or her eligibility for AFDC; and

(2) To confirm information provided by an applicant that is relevant in determining the amount of the assistance payment.

Such actions involve the examination of supporting documentation in the applicant's possession and obtaining additional information, when necessary, from appropriate third party sources; also included are any periodic support activities taken by the State agency to enhance these actions. Examples of such measures include but are not limited to: Automated data matches to establish the accuracy of statements on the application; use of error prone profiles; home visists or collateral contacts; credit bureau inquiries; training on investigative interviewing techniques.

(c) *Annual evaluation.* A State agency shall make a written evaluation for each Federal fiscal year of the effectiveness of its verification measures, submit a copy of the evaluation to the FSA Regional Office by February 15 of the following Federal fiscal year, and submit any appropriate amendments to its title IV-A State plan. The evaluation must include an assessment of verification measures such as home visits, credit bureau inquiries, data matches with entitlement programs, in addition to those included in the State's Income and Eligibility Verification System (IEVS), or other similar measures implemented by States. Information and data gathered in connection with a corrective action plan prepared pursuant to 45 CFR 205.40 may be utilized in preparing this evaluation.

(d) *Federal financial participation.* Verification measures to detect fraudulent applications will be matched as administrative costs at a 50 percent rate.

[55 FR 18728, May 4, 1990]

PART 237—FISCAL ADMINISTRATION OF FINANCIAL ASSISTANCE PROGRAMS

AUTHORITY: Sec. 1102, 49 Stat. 647 (42 U.S.C. 1302).

§ 237.50 Recipient count, Federal financial participation.

Pursuant to the formulas in sections 3, 403, 1003, 1118, 1121, 1403, and 1603 of the Social Security Act, it is necessary to identify expenditures that may be included in claims for Federal financial participation. The quarterly statement of expenditures and recoveries which is required for OAA, AFDC, AB, APTD, and AABD must include, as a part of the basis for computing the amount of Federal participation in such expenditures, the number of eligible recipients each month. However, where the State is making claims under section 1118 of the Act or under optional provisions for Federal sharing specified in such paragraphs no recipient count is involved. Vendor payments for medical care may not be considered if the State has a plan approved under title XIX of the Act. The procedures for determining recipient count are set forth in paragraphs (a), (b) and (c) of this section.

(a) *Adult assistance categories.* For each adult assistance category, under title I, X, XIV, or XVI, of the Act, the recipient count for any month may include:

(1) Eligible recipients who receive money payments or in whose behalf protective payments are made for that month:

Provided, That such payments are not excluded from Federal financial participation under the provisions of § 233.145(c) of this chapter; plus

(2) Other eligible recipients in whose behalf payments are made for institutional services in intermediate care facilities for that month, but only in a State which does not have in effect a plan approved under Title XIX of the Act. (See § 233.145(b)(2) of this chapter.)

(b) *AFDC category.* For the AFDC category under title IV, Part A, of the Act:

(1) The recipient count for any month may include:

(i) Eligible recipients in families which receive a money payment, plus

(ii) Eligible children in foster care not otherwise counted in whose behalf a foster care payment is made in such month, plus

(iii) Eligible recipients in families not otherwise counted in whose behalf protective or nonmedical vendor assistance payments are made for such month, not to exceed 10 percent of the total recipients counted under paragraphs (b)(1)(i) and (ii) of this section. The 10 percent limitation does not apply with respect to individuals for whom protective or nonmedical vendor payments are made pursuant to section 402(a)(19)(F) of the Act because there has been a refusal without good cause to accept employment, work or training, or with respect to individuals for whom protective or vendor payments are made pursuant to section 402(a)(26) of the Act because of the failure of the caretaker relative to assign rights to support or to cooperate in determining paternity and securing support.

Provided, That such payments are not excluded from Federal financial participation under the provisions of § 233.145(c) of this chapter.

(2) The recipient count may include all eligible children, plus the eligible relative with whom the children are living (as specified in section 406(a)(1) of the Act).

(3)(i) When at least one of the children in a family is eligible due to the incapacity of his parent in the home, the recipient count may include all eligible children, the parent, and the parent's spouse with whom the children are living, if the needs of such parent and spouse were included in computing the assistance payment.

(ii) As used in paragraph (b)(3)(i) of this section, the term "parent" means the natural or adoptive parent, or the stepparent who was married under State law to the child's natural or adoptive parent and is legally obligated to support the child under State law of general applicability which requires stepparents to support stepchildren to the same extent that natural or adoptive parents are required to support their children; and the term "spouse" means an individual who is the husband or wife of the child's own parent, as defined above, by reason of a legal marriage as defined under State law.

(4)(i) When at least one of the children in a family is eligible due to the unemployment of his or her parent who is the principal earner in the home, the recipient count may include all eligible children, the parent who is the principal earner and spouse with whom the children are living, if the needs of such parent and spouse were included in computing the assistance payment.

(ii) For purposes of paragraph (b(4)(i) of this section, the definitions of the terms "parent" and "spouse" as specified in paragraph (b)(3)(ii) of this section are applicable.

(5) Where there are two or more dependent children living in a place of residence with two other persons who are not married to each other and each of such other persons is a relative who has responsibility for the care and control of one or more of the dependent children, there may be two separate AFDC families for purposes of aid and recipient count, if neither of such persons is the parent of all the dependent children.

(c) Essential person: An "essential person" or other ineligible person who is living with the eligible person may not be counted as a recipient.

[38 FR 32914, Nov. 29, 1973, as amended at 40 FR 52376, Nov. 10, 1975; 51 FR 9207, Mar. 18, 1986]

PART 238—COMMUNITY WORK EXPERIENCE PROGRAM

Subpart A—Introduction

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238.01 Scope of this part.

Subpart B—Administration and Program Requirements

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238.12 Statewideness.
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Subpart C—Sponsor and Project Requirements

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238.60 Allowable administrative costs.
238.62 Expenses not matchable.
238.64 Fiscal recordkeeping requirements.

AUTHORITY: Secs. 409 and 1102 of the Social Security Act (42 U.S.C. 609 and 1302); secs. 202 and 204 of Pub. L. 100-485, 102 Stat. 2378, 2381.

SOURCE: 47 FR 5683, Feb. 5, 1982, unless otherwise noted.

Subpart A—Introduction

§ 238.01 Scope of this part.

(a) *General.* State IV-A agencies may operate community work experience programs (CWEP) which serve a useful public purpose, and require AFDC recipients to participate in them as a condition of AFDC eligibility. The purpose of these CWEP programs is to provide work experience for AFDC recipients. CWEP projects must meet appropriate standards for health and safety and may not displace persons currently employed or fill established unfilled vacancies. Subject to the conditions specified at § 238.16, State IV-A agencies must provide necessary transportation, day care, and other related services or reimburse CWEP participants for costs directly related to participation in the program. Allowable costs to operate CWEP (see Subpart D) are matched by the Federal government at the AFDC administrative match level (50 percent).

(b) *Applicability.* The provisions of this part do not apply to any State IV-A agency which has an approved JOBS plan under § 250.20. A list of State IV-A agencies with approved JOBS plans is available from the Family Support Administration, Office of Family Assistance, 370 L'Enfant Promenade, SW., Washington, D.C. 20447. For all State IV-A agencies, the provisions of this part are repealed as of October 1, 1990.

[54 FR 42244, Oct. 13, 1989]

Subpart B—Administration and Program Requirements

§ 238.10 Agency administering the program.

Each State with a plan approved under Title IV-A of the Social Security Act may establish and operate a CWEP program in accordance with the requirements in this part. If the State chooses to establish and operate CWEP, it must administer the program through the single State agency designated in its title IV-A State plan to administer or supervise the AFDC program.

§ 238.12 Statewideness.

The State plan shall specify the geographic areas for which the State will implement CWEP. These may include all areas of the State or only certain subareas at the Agency's discretion.

§ 238.14 Establishment of a mandatory participant group.

(a) The State plan must identify the groups or categories of AFDC recipients who will be required to participate in CWEP. Under this requirement, States may require that any AFDC recipient, as a condition of eligibility for AFDC, participate in CWEP unless the individual:

(1) Meets the WIN exemption criteria under 45 CFR 224.20, except as provided in paragraph (b) of this section;

(2) Is both currently employed for at least 80 hours per month and earning not less than the legally established or defined minimum wage for such employment (for jobs which do not have an established minimum wage, recipients currently employed 80 hours must be exempted from CWEP regardless of wage level.);

(3) Was denied AFDC solely because the amount of his or her entitlement would have been less than $10 per month;

(b) A recipient who is exempt from WIN may nevertheless be required to participate in CWEP if:

(1) He or she was exempt due to remoteness from a work incentive project under § 224.20(b)(6); or

(2) He or she was exempt as a caretaker of a child at least three years old, under § 224.20(b)(8), and appropriate child care can be secured to enable participation in the CWEP project.

(c) Applicants for aid to families with dependent children may not be required to participate in CWEP.

(d) A State plan may provide for voluntary participation in CWEP projects by all, or any subgroups, of AFDC recipients who desire to do so. If the plan provides for voluntary participation, it will identify the categories of voluntary participants to whom CWEP is available and any conditions which attach to their participation.

§ 238.16 Participant reimbursement.

The State plan shall specify the amount and types of participation costs the State will reimburse to recipients. Under this requirement:

(a) Participants may not be required to use their assistance or their income or resources to pay participation costs which are within the limits specified as allowable in paragraph (b).

(b) In cases where the State is unable to provide necessary services directly to participants or through a third party, States must provide reimbursement for necessary transportation and day care costs that are incurred by the recipient and directly related to participation in CWEP.

(1) Participants shall be reimbursed for transportation costs directly related to their participation in amounts

equal to the cost of transportation by the most appropriate means (as determined by the State agency); and

(2) Participants shall be reimbursed for day care costs in such amounts as are determinedl by the State agency to be reasonable, necessary, and cost-effective. However, in no event shall the reimbursement exceed the amounts allowed to a recipient working the same number of hours under § 233.20(a)(11)(i)(C) as a disregard from earned income.

(c) States must provide reimbursement for costs other than transportation and day care that the State determines are necessary and directly related to participation in CWEP incurred by the participant. For FFP purposes, this amount shall not exceed $10 per month, per participant. (See Subpart D for FFP requirements.)

[49 FR 35603, Sept. 10, 1984]

§ 238.18 Participant protection.

States may provide worker's compensation or other comparable protection for their CWEP participants. The State agency shall provide such protection to those participants performing work for Federal offices or agencies, to the same extent as is provided to other CWEP participants in the State. The cost of this protection shall be considered an administrative expense and matched accordingly.

[49 FR 35603, Sept. 10, 1984]

§ 238.20 Participation requirements.

(a) States determine CWEP participation within broad Federal requirements:

(1) Where more than one member of an assistance unit meets the criteria, under the State's plan for participation in CWEP, the State may require that each eligible individual participate in accordance with paragraph (b) of this section.

(2) Part-time participation in WIN and CWEP may be required where it is deemed appropriate by the State. The State plan shall specify whether part-time participation will be required and the circumstances under which it will be deemed "appropriate."

(b) The State plan must specify the maximum number of hours and the formula used to determine the mandatory hours of participation where the State specifies a lesser maximum. No assistance unit may be required monthly to participate in CWEP more than the number of hours which would result from dividing the family's grant amount by the greater of the Federal or the applicable State minimum wage.

(c) The State must have procedures under which there is coordination among CWEP, the employment search program, and WIN to ensure that job placement will have priority.

(d) Nothing in section 409 of the Act, nor in this part shall be construed as authorizing the payment of AFDC as compensation for work performed.

(e) CWEP participants who perform work in the public interest for a Federal office or agency shall not be considered for any purpose as Federal employees.

[47 FR 5683, Feb. 5, 1982, as amended at 48 FR 28410, June 21, 1983; 49 FR 35604, Sept. 10, 1984]

§ 238.22 Sanctions.

The State plan shall provide that where a mandatory CWEP participant has been determined to have failed or refused without good cause to participate in CWEP, the sanctions specified in § 224.51 (and further described in § 234.60) shall apply. Under this requirement the State plan shall specify the criteria to be used in determining whether or not there was "good cause" in refusing or failing to participate in CWEP.

§ 238.24 Hearings and notices.

The State plan shall specify that the provisions of § 205.10, which relate to hearing and notice procedures, apply to CWEP participants.

§ 238.26 Chief Executive Officer.

The Chief Executive Officer of the State:

(a) Shall provide for coordination among CWEP, the program of employment search and WIN to ensure that:

(1) Job placement will have priority; and

(2) An individual who is required to participate in more than one of the

programs identified in this section may not be denied aid under the State plan on the grounds of "failure to participate" in one such program if there is a conflict in the implementation or scheduling of activities between programs, and he is satisfactorily participating in the other program.

(b) May require that a participant who satisfactorily meets the requirements of CWEP may be required to participate in a program of employment search or WIN during such time as he is not participating in CWEP.

[48 FR 28410, June 21, 1983]

Subpart C—Sponsor and Project Requirements

§ 238.50 Sponsor requirements.

The State agency will designate a sponsor to operate each project or, at the agency's option, more than one project. Only public agencies, which includes Federal offices or agencies, and nonprofit organizations may be sponsors. For purposes of this provision Federal offices or agencies include agencies of the Executive branch of the Federal government, Congressional offices, and Federal courts.

[49 FR 35604, Sept. 10, 1984]

§ 238.52 Project requirements.

The State plan must provide that CWEP projects:

(a) Serve a useful public purpose;

(b) Do not result in the displacement of persons currently employed or the filling of established, unfilled position vacancies. This means that CWEP participants may not perform tasks which would have been undertaken by employees or which have the effect of reducing the work of employees. However, CWEP participants may perform the same type of tasks as performed by employees;

(c) Are not in any way related to political, electoral, or partisan activities;

(d) Are not in violation of applicable Federal, State or local health and safety standards, and provide reasonable work conditions; and

(e) Have not been developed in response to, or in any way associated with, the existence of a strike, lockout or other bona fide labor dispute, or violate any existing labor agreement between employees and employers.

§ 238.54 Project assignment criteria.

The State plan must provide that:

(a) Assignments to CWEP projects will take into consideration to the extent possible, the prior training, proficiency, experience and skills of a participant;

(b) Participants will not be assigned to projects which require that they travel unreasonable distances from their homes or remain away from their homes overnight without their consent.

Subpart D—Federal Financial Participation

§ 238.60 Allowable administrative costs.

Federal financial participation is available for administrative costs of the AFDC program for Community Work Experience program expenditures, when CWEP has been approved as part of the State plan under Title IV-A of the Act. Such costs include amounts paid to participants which are:

(a) Identified in the State plan; and

(b) Within the limits specified under § 238.16.

[49 FR 35604, Sept. 10, 1984]

§ 238.62 Expenses not matchable.

FFP is not available for:

(a) Capital expenditures, or depreciation or use allowances in connection with a CWEP;

(b) The cost of making or acquiring materials or equipment in connection with participation in a CWEP project;

(c) The cost of supervision of CWEP participants; and

(d) Costs associated with the use of any facilities of the State public employment offices used to find employment opportunities for participants.

§ 238.64 Fiscal recordkeeping requirements.

To support claims for FFP, States shall identify in their accounting records all CWEP costs which represent direct payments to participants in the program. States must also identify in their monthly assistance rolls those individuals to whom participant expenditures were made during any month. The identification in the accounting records and monthly assistance rolls shall be in such form as to permit verification of the monthly direct payments to each individual participant subject to FFP.

PART 239—WORK SUPPLEMENTATION PROGRAM

Subpart A—Introduction

Sec.
239.01 Scope of this part.

Subpart B—Program Description and Administration of the Work Supplementation Program

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239.12 Eligibility.
239.14 Types of jobs.
239.16 Providing or subsidizing jobs.
239.18 Conditions of employment.
239.20 Wages.
239.24 Participation in other work programs.
239.26 Hearings and notices.

Subpart C—Standards of Need and Treatment of Earned Income

239.50 Adjustment of standard of need.
239.52 Differential need standards—geographical areas.
239.54 Differential need standards—categories of recipients.
239.56 Further adjustments in amount of aid paid.
239.58 Earned income disregard.

Subpart D—Federal Financial Participation

239.80 Wage subsidies.
239.82 Availability of Federal financial participation.
239.84 Claiming Federal Financial Participation.

AUTHORITY: Secs. 414 and 1102 of the Social Security Act (42 U.S.C. 614 and 1302); secs. 202 and 204 of Pub. L. 100-485, 102 Stat. 2378, 2381.

SOURCE: 47 FR 5685, Feb. 5, 1982, unless otherwise noted.

Subpart A—Introduction

§ 239.01 Scope of this part.

(a) *General.* Under the work supplementation program, State IV-A agencies may use AFDC funds to develop and subsidize work for AFDC recipients as an alternative to aid provided to AFDC recipients. The work supplementation program may be implemented notwithstanding the definitions contained in section 406 of the Social Security Act or any other provision of law. Under this program AFDC recipients may choose, on a voluntary basis, to accept an offer of work to the extent such jobs are made available. In order to pay for the costs of developing and subsidizing these jobs, a State IV-A agency may reduce the need standard in effect for selected categories of recipients on the basis of their ability to participate in the work supplementation program. The reduction of the need standard may be made for either the entire State or for selected geographical areas. The total amount of Federal financial participation for operation of a State IV-A agency's work supplementation program is limited as provided in subpart D of this part.

(b) *Applicability.* The provisions of this part do not apply to any State IV-A agency which has an approved JOBS plan under § 250.20. A list of State IV-A agencies with approved JOBS plans is available from the Family Support Administration, Office of Family Assistance, 370 L'Enfant Promenade, SW., Washington, DC 20447. For all State IV-A agencies, the provisions of this Part are repealed as of October 1, 1990.

[54 FR 42244, Oct. 13, 1989]

Subpart B—Program Description and Administration of the Work Supplementation Program

§ 239.10 Agency administering the program and State plan requirements.

States which elect to have a Work Supplementation Program shall administer the program through either (a) the agency designated to administer or supervise the administration of the State plan under section 402(a)(3) of the Act; or (b) the agency (if any) designated to administer the Community Work Experience Program under section 409 of the Act. A State choosing to implement a Work Supplementation Program shall amend its State plan in accordance with the following provisions.

§ 239.12 Eligibility.

A State shall determine who is eligible to participate in a Work Supplementation Program from among the persons who would, at the time of their placement in such program, be eligible for assistance under the State plan as in effect in May 1981, or as modified thereafter as required by Federal law.

§ 239.14 Types of jobs.

A State may provide or subsidize any job position under the program as such State determines to be appropriate, but acceptance of any such position shall be voluntary. The job positions which may be provided for recipients of aid must be of the following general types:

(a) A job position provided to an eligible individual by the State or local agency administering the State plan under this part;

(b) A job position provided to an eligible individual by any other employer for which all or part of the wages are paid by such State or local agency.

[49 FR 35604, Sept. 10, 1984]

§ 239.16 Providing or subsidizing jobs.

The State agency administering this program may use whatever means such State determines are appropriate in order to provide or to subsidize jobs for participants in the Work Supplementation Program. A State may make whatever arrangements it deems appropriate with regard to the type of work provided, the length of time the position is to be provided or subsidized, the amount of wages to be paid to the recipient receiving the work supplemented job, the amount of subsidy to be provided by the State or local agency and the conditions of participation.

§ 239.18 Conditions of employment.

(a) A State or local agency administering the State plan is not required to provide employee status to any eligible individual to whom it provides a job position under the Work Supplementation Program, or with respect to whom it provides all or part of the wages paid to such individual by another entity under this program.

(b) A State or local agency administering the program is not required to provide that eligible individuals filling job positions provided by other entities under such program be provided employee status by such entity during the first 13 weeks during which they fill such position.

§ 239.20 Wages.

Participants in the Work Supplementation Program will be paid wages which shall be considered to be earned income for purposes of any provision of law.

§ 239.24 Participation in other work programs.

No individual receiving a grant under the State plan shall be excused, by reason of the fact that such State has a Work Supplementation Program, from any requirement of title IV-A or title IV-C relating to work requirements. However, individuals actually employed in a Work Supplementation Program shall be excused from such requirements for so long as they remain employed in the program.

[49 FR 35604, Sept. 10, 1984]

§ 239.26 Hearings and notices.

The State plan shall specify that the provisions of § 205.10, which relate to hearing and notice procedures, apply for purposes of the Work Supplementation Program.

Subpart C—Standards of Need and Treatment of Earned Income

§ 239.50 Adjustment of standard of need.

A State operating a Work Supplementation Program under this part may adjust the standards of need under the State plan as the State determines to be necessary and appropriate for carrying out such program. Such changes in need standards may be made notwithstanding § 233.20.

§ 239.52 Differential need standards—geographical areas.

A State operating a Work Supplementation Program under this part may provide that the needs standards in effect in those areas of the State in which such program is in operation may be different from the needs standards in effect in the areas in which such program is not in operation.

§ 239.54 Differential need standards—categories of recipients.

A State operating a Work Supplementation Program under this part may provide that the needs standards for categories of recipients of aid may vary among such categories as the State determines to be appropriate on the basis of ability to participate in the Work Supplementation Program.

§ 239.56 Further adjustments in amount of aid paid.

A State may make further adjustments in the amounts of aid paid under the plan to different categories of recipients in order to offset increases in benefits from other government-provided, needs-related programs as the State determines necessary and appropriate to further the purposes of the Work Supplementation Program.

§ 239.58 Earned income disregard.

(a) A State operating a Work Supplementation Program under this part may reduce or eliminate the amount of earned income to be disregarded under the State plan as the State determines to be necessary and appropriate to further the purposes of the Work Supplementation Program.

(b) Notwithstanding the time limitations on the $30 and one-third and the $30 disregards in section 233.20(a)(11), a State may allow a participant employed under a Work Supplementation Program to receive the $30 and one-third or the $30 disregards for one or more of the first 9 months of such employment.

[49 FR 35604, Sept. 10, 1984]

Subpart D—Federal Financial Participation

§ 239.80 Wage subsidies.

Payments by the State to individuals or to entities providing jobs for recipients under the program shall be expenditures incurred by the State for aid to families with dependent children, except as limited by the ceiling for Federal financial participation described in this subpart.

[47 FR 5685, Feb. 5, 1982; 47 FR 43383, Oct. 1, 1982]

§ 239.82 Availability of Federal financial participation.

Federal funds may be paid to a State under this part with respect to expenditures incurred in operating a Work Supplementation Program.

(a) The amount of payments to individuals and employers in the program subject to Federal matching as program expenditures shall not exceed:

(1) The monthly amount that would otherwise be payable under the State plan if the family of each individual employed in the program had received the maximum amount of aid payable to such a family with no income for a period of either 9 months or the length of the individual's employment in the program, whichever is less. (This amount is determined without regard to any adjustments made under subpart C of this part, and for each month of participation, may be based upon the maximum amount that would otherwise have been payable for a month at the time of placement in the program.)

(2) The amount expended on payments to employers and individuals employed under this program.

(b) The amount of administrative costs subject to Federal matching shall be those costs which are reasonable, necessary and directly related to the operation of a WSP or to employment under WSP.

[49 FR 35604, Sept. 10, 1984]

§ 239.84 Claiming Federal financial participation.

A State must calculate the amount subject to FFP for its Work Supplementation Program and maintain records to support its claim in accordance with procedures established by the Secretary.

PART 240—EMPLOYMENT SEARCH PROGRAM

Subpart A—Introduction

Sec.

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Subpart C—Federal Financial Participation

240.60 Allowable administrative expenses.
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240.64 Fiscal recordkeeping requirements.

AUTHORITY: Secs. 402(a) and 1102 of the Social Security Act (42 U.S.C. 602(a) and 1302); secs. 202 and 204 of Pub. L. 100-485, 102 Stat. 2377, 2381.

SOURCE: 48 FR 28410, June 21, 1983, unless otherwise noted.

Subpart A—Introduction

§ 240.01 Scope of this part.

(a) *General.* Each State with a plan approved under title IV-A of the Social Security Act may establish a program of employment search in accordance with the requirements in this Part. The single State agency designated in the State plan to administer or supervise the AFDC program must administer the employment search program.

(b) *Applicability.* The provisions of this Part do not apply to any State IV-A agency which has an approved JOBS plan under § 250.20. A list of State IV-A agencies with approved JOBS plans is available from the Family Support Administration, Office of Family Assistance, 370 L'Enfant Promenade, SW., Washington, DC 20447. For all State IV-A agencies, the provisions of this Part are repealed as of October 1, 1990.

[54 FR 42244, Oct. 13, 1989]

Subpart B—Administration and Program Requirements

§ 240.10 Agency administering the program.

Each State with a plan approved under title IV-A of the Social Security Act may establish a program of employment search in accordance with the requirements in this part. The single State agency designated in the State plan to administer or supervise the AFDC program must administer the employment search program.

§ 240.12 Statewideness.

The employment search program must be statewide. It may provide different employment search activities or impose different participation requirements based on an individual's characteristics.

§ 240.14 Establishment of mandatory participant groups.

(a) The State plan shall specify the groups, types, and classes of applicants and recipients who will be mandatory participants in the employment search program. These categories may only include individuals who would be required to register for WIN under § 224.20, and those excluded from registration requirements because of remoteness from a WIN site under § 224.20(b)(6).

(b) A State plan may also provide for voluntary participation in an employment search program in those not required to participate under paragraph (a) of this section. If the plan provides for voluntary participation, it shall identify any conditions which attach to voluntary participation. States must inform voluntary participants of these conditions, if any.

(c) The State agency may exempt from employment search any applicant who does not appear to meet eligibility criteria for AFDC based upon a preliminary assessment it makes at the time the individual files his application. This process must not constitute informal denial of eligibility for assistance nor delay the processing of the application.

§ 240.20 Program requirements.

(a) The State plan must specify the requirements for participation (such as a minimal number of employer contacts a week or that a bona fide job offer cannot be refused without good cause). However, these requirements may vary for different categories of individuals depending on an individual's work history, etc. States must not impose requirements which would delay processing of an application. States may require that an individual participate in the employment search program from the time he files an application for aid for an initial period, prescribed in the State plan, of up to 8 consecutive weeks. Following this initial period (which may extend beyond the date when eligibility is determined), the States may require additional participation in employment search, not in excess of 8 weeks (or its equivalent) in any period of 12 consecutive months. The first such period of 12 consecutive months shall begin at any time following the close of the initial period.

(b) The State may assign individuals to any combination of CWEP, WIN, and employment search activities. The State plan must specify procedures for coordination among CWEP, WIN, and the employment search program to ensure that:

(1) Job placement will have priority; and

(2) An individual who is required to participate in more than one of the programs identified in this section may not be denied aid under the State plan on the grounds of "failure to participate" in one such program if there is a conflict in the implementation or scheduling of activities between programs, and he is satisfactorily participating in the other program.

The State may require an individual to participate in a program of employment search during such time as he is not participating in CWEP or WIN.

(c) The State plan must also provide for methods to ensure that requirements for participation in employment search are met. The State must establish procedures enabling it to verify participation in the program.

(d) The State plan shall also provide that participants in the program:

(1) Are furnished those support services (such as transportation and child care) necessary for participation or

(2) Are paid in advance or reimbursed for expenses or such services which they reasonably incur (as defined by the State) in order to meet the requirements of the program.

The plan must specify how this requirement will be met and which services will be covered.

§ 240.22 Conditions of eligibility and sanctions.

(a) The State plan shall provide for sanctions when a recipient, who is required to participate in the program of employment search, fails to meet the requirements for participation in that program, and shall also indicate the duration of the sanction periods which apply in cases of first or subsequent failures to participate. If a recipient fails to meet State requirements for participation in employment search, the sanctions specified below shall remain in effect for a period (effective no later than the first day of the corresponding payment month) up to 3 payment months for the first such failure and up to 6 payment months for any subsequent such failure.

(1) If the individual is a caretaker relative receiving benefits (other than a principal earner), the State shall not take into account his needs in determining the assistance unit's need for assistance. The State shall provide assistance in the form of protective or vendor payments in accordance with § 234.60 of this chapter;

(2) If the individual is one of several dependent children in the assistance unit, the State shall not take into account the child's needs in determining the assistance unit's need for assistance; if the individual is the only dependent child in the assistance unit, the State shall deny assistance to the entire unit; and

(3) If the individual is a principal earner, the State shall deny assistance to the entire assistance unit.

(b) The State plan shall provide that an applicant will remain ineligible for assistance for so long as he fails to meet the State requirements for participation in the employment search program:

(1) If the individual is a caretaker relative, the State shall not take into account his needs in determining the assistance unit's need for assistance. The State shall provide assistance in the form of protective or vendor payments in accordance with § 234.60 of this chapter;

(2) If the individual is one of several dependent children in the assistance unit, the State shall not take into account the child's needs in determining the assistance unit's need for assistance; if the individual is the only dependent child in the assistance unit the State shall deny assistance to the entire unit; and

(3) If the individual is a principal earner, the State shall deny assistance to the entire assistance unit.

(c) The State plan shall specify the criteria to be used in determining whether applicants and recipients have "good cause" for failing to meet State requirements for participation in employment search.

[49 FR 35604, Sept. 10, 1984]

§ 240.24 Hearings and notices.

The State plan shall specify that the hearings and notice procedures at § 205.10 apply to applicants and recipients who are required to participate in employment search under this part.

Subpart C—Federal Financial Participation

§ 240.60 Allowable administrative expenses.

(a) Federal financial participation (FFP) is available at a 50 percent rate for reasonable expenditures which a State makes in implementing an employment search program. The State plan must specify the services and activities for which FFP will be claimed. Under this requirement, the plan must include those services and activities:

(1) For which direct payment will be made to participants, whether in advance or by way of reimbursement;

(2) For which payment will be made to third-party providers; and

(3) Which the agency will provide directly to participants.

(b) FFP is available for direct payments to employment search participants for expenditures for transportation, child care, and other costs reasonably incurred by participants in meeting the requirements of the program.

(c) FFP is available for reasonable expenses incurred by the single State agency in providing services or in contracting with third-parties to provide services for its employment search program if the expenses are consistent with the approved employment search program. FFP is available for expenditures in employment search activities for applicants and recipients such as group jobseeking, job development, exposure to labor market information, work orientation, and referral which are necessary to assist individuals in locating unsubsidized employment.

§ 240.62 Expenses not matchable.

FFP is not available for expenditures for services or activities which are not essential to immediate job seeking, such as longer range remedial care and services, training or psychological counseling.

§ 240.64 Fiscal recordkeeping requirements.

To support claims for FFP, States shall identify all participants in their employment search program, the activities in which each individual participates, and any services or direct payments for expenses provided to individual participants. The reporting or recordkeeping provisions for Employment Search have been assigned OMB No. 0960-0319.

PART 250—JOB OPPORTUNITIES AND BASIC SKILLS TRAINING PROGRAM

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AUTHORITY: Sections 402, 403, 481, 481 note, 482, 483, 484, 485, 486, 487, and 1102 of the Social Security Act as amended (42 U.S.C. 602, 603, 681, 682, 682 note, 683, 684, 685, 686, 687, and 1302); Section 204(b) of Pub. L. 100-485, 102 Stat. 2381.

SOURCE: 54 FR 42245, Oct. 13, 1989, unless otherwise noted.

Subpart A—Purpose and Definitions

§ 250.0 Purpose.

(a) The purpose of the Job Opportunities and Basic Skills Training (JOBS) program under titles IV-A and IV-F of the Social Security Act is to assure that needy families with children obtain the education, training and employment that will help avoid long-term welfare dependence. To accomplish this purpose, the JOBS program is intended to;

(1) Encourage, assist, and require applicants for and recipients of AFDC to fulfill their responsibilities to support their children by preparing for, accepting, and retaining employment;

(2) Provide individuals with the opportunity to acquire the education and skills necessary to qualify for employment;

(3) Provide necessary supportive services, including transitional child care and medical assistance, so that individuals can participate in JOBS and accept employment;

(4) Promote coordination of services at all levels of government in order to make a wide range of services available, especially for individuals at risk of long-term welfare dependency, and to maximize the use of existing resources; and

(5) Emphasize accountability for both participants and service providers.

(b) This part provides that a State IV-A agency, as a condition of participation in the AFDC program, must operate a JOBS program. In addition, these regulations require that States provide child care and other supportive services for participants in the JOBS program, as well as certain other individuals, pursuant to parts 255 and 256. This part contains the policies, rules and regulations pertaining to the Job Opportunities and Basic Skills Training (JOBS) program.

(c) This part is applicable to States with approved JOBS programs pursuant to § 250.20, and to all States as of October 1, 1990.

§ 250.1 Definitions.

Except to the extent otherwise specified in this section, terms used in part 250 shall have the same meaning otherwise applicable to the Aid to Families with Dependent Children (AFDC) program.

Adult recipient means an individual other than a dependent child (unless such child is the minor custodial parent of another dependent child) whose needs are met (in whole or in part) with payments of Aid to Families with Dependent Children.

Basic literacy level means a literacy level that allows a person to function at a level equivalent to at least grade 8.9.

Component means any of the services or activities available under the provisions of § 250.44 through § 250.48.

CWEP means the community work experience program authorized in § 250.45 and § 250.63.

Department means the U.S. Department of Health and Human Services.

FFP means Federal financial participation in expenditures made by a State.

Institution of higher education means any institution determined by the Secretary of Education to meet:

(1) The definition of such term contained in either section 1201(a) or section 481(a) of the Higher Education Act of 1965 (20 U.S.C. 1001 *et seq.*), as amended; or

(2) The definitions of "proprietary institution of higher education" or "postsecondary vocational institution," which are defined at sections 481 (b) and (c) of that Act.

Intensive job search is, for purposes of § 250.74(c), job search by a parent in an unemployed parent case that is either group or individual job search for a monthly average equivalent to 20 hours per week.

JAS means a JOBS Automated System authorized under § 250.81 for a State to support its operation of the JOBS program.

JOBS is the Job Opportunities and Basic Skills Training program required by section 402(a)(19) of the Social Security Act, as amended by section 201(a) of the Family Support Act of 1988 (Pub. L. 100-485) and set forth in part F of title IV of the Social Security Act, as added by section 201(b) of the Family Support Act.

JOBS plan means the statewide operational plan for JOBS.

Limited English proficiency means limited ability in speaking, reading, writing, or understanding the English language by a person whose native language is a language other than English or by a person who lives in a family or community environment where a language other than English is the dominant language.

Make good progress and *Making satisfactory progress* in an educational component mean that the participant in any educational activity is meeting, on a periodically measured basis of less than one year, such as a term or quarter, a consistent standard of progress based upon a written policy that was: developed by the educational institution or program in which she is enrolled; and approved by the appropriate State or local education agency and by the State welfare agency or Indian Tribe or Alaska Native organization. Such standard includes both a qualitative measure of a participant's progress, such as a grade point average, and a quantitative measure, such as a reasonable time limit by which a student is expected to complete her studies. Upon review and approval by the State or local education agency and the State IV-A agency or Indian Tribe or Alaska Native organization, the standard may provide that a student who does not meet the institution's or program's progress standard is nonetheless making satisfactory progress during a probationary period, or shall be deemed to be making satisfactory progress because of mitigating circumstances. *Make good progress* and *Making satisfactory progress* in a training component (i.e., OJT and skills training) mean that the participant is meeting, on a periodically measured basis of less than one year, such as quarterly, a consistent standard of progress based upon a written policy that was: developed by the training provider, and approved by the State IV-A agency or Indian Tribe or Alaska Native organization. Such standard includes both a qualitative measure of a participant's progress, such as competency gains or proficiency level, and a quantitative measure, such as a reasonable time limit for completion of the training program. Standards for making good or satisfactory progress in a training program must be employed by October 1, 1992, but should be used at an earlier time if available.

MSA means Metropolitan Statistical Area, a system of geographical areas defined and maintained by the Executive Office of the President, Office of Management and Budget.

OJT means on-the-job training as authorized in § 250.45 and § 250.61.

Postsecondary education means a program of postsecondary instruction offered by:

(1) An institution of higher education determined by the Secretary of Education to meet section 1201(a), or section 481 (a), (b), or (c) of the Higher Education Act of 1965, as amended;

(2) An institution of higher education or a vocational school determined by the Secretary of Education to meet section 435(b) or section 435(c) of the Higher Education Act of 1965, as amended; or

(3) A public institution that is legally authorized by the State to provide such a program within the State.

Secretary means the Secretary of Health and Human Services.

Target population means that group composed of each individual who:

(1) Is receiving AFDC, and who has received such aid for any 36 of the preceding 60 months;

(2) Makes application for AFDC, and has received such aid for any 36 of the 60 months immediately preceding the most recent month for which application has been made;

(3) Is a custodial parent under the age of 24 who:

(i) Has not completed a high school education and, at the time of application for AFDC, is not enrolled in high school (or a high school equivalency course of instruction); or

(ii) Had little or no work experience in the preceding year; or

(4) Is a member of a family in which the youngest child is within 2 years of being ineligible for AFDC because of age.

For a particular State, this term will include, in lieu of individuals listed, such alternative groups of long-term or potential long-term recipients as the State has demonstrated to the satisfaction of the Secretary are feasible target populations in that State's caseload.

UP means Unemployed Parent and refers to the program authorized in section 407 of the Social Security Act which provides aid to a dependent child who is deprived of parental support or care by reason of the unemployment of the parent who is the principal earner.

Subpart B—Administration

§ 250.10 State IV-A agency administration.

(a) The State agency responsible for the administration or supervision of the State's title IV-A plan is responsible for the administration or supervision of the JOBS program.

(b) Except as provided in paragraph (c)(2), JOBS activities which involve decision-making with regard to individual participants may be performed by an entity other than the State IV-A agency according to the policies, rules, and regulations of the State IV-A agency. In doing so, such entity must not have the authority to review, change, or disapprove any administrative decision of the State IV-A agency, or otherwise substitute its judgment for that of the State IV-A agency as to the application of policies, rules, and regulations promulgated by the State IV-A agency.

(c) JOBS activities may be delegated or contracted with the exception of the following:

(1) Overall program administration, including:

(i) Establishment of optional provisions and components of the program;

(ii) Responsibility for program planning, design of program, and determining who should participate;

(iii) Establishment of program participation requirements;

(iv) Development of a definition of good cause for failing to participate; and

(v) The issuance of other policies, rules, and regulations governing the program.

(2) Actions involving individuals, including:

(i) Determination of exemption status;

(ii) Determination of good cause for failure or refusal to participate;

(iii) Determination and application of sanctions;

(iv) Providing notice of case actions; and

(v) Fair hearings.

§ 250.11 Requirement for a statewide program.

(a) Not later than October 1, 1992 the State must make the JOBS program available on a statewide basis. This means that the JOBS program, including all components described in § 250.44 and two of the components in § 250.45, must be available in each political subdivision of the State, unless the State determines that it is not feasible to do so.

(b) Although all required and at least two optional components, as described in §§ 250.44 and 250.45, must be included in a State JOBS program, the components need not be operated in the same manner in each political subdivision, nor must the State operate the same optional components, as listed in § 250.45, in each political subdivision.

(c)(1) If the State IV-A agency concludes that a statewide program is not feasible, appropriate justification must be submitted to the Secretary for review and approval as part of its JOBS plan, unless the following criteria are met:

(i) A minimal JOBS program is available in a number of political subdivisions in which 95 percent of the State's adult recipients reside; and

(ii) A complete JOBS program is available in all Metropolitan Statistical Areas in the State, and in a number of political subdivisions in which 75 percent of the State's adult recipients reside.

(iii) A minimal program includes high school or equivalent education, as specified in § 250.44, one optional component from among those specified at § 250.45, and information and referral to available non-JOBS employment services. A complete program includes all mandatory components as well as any two optional components.

(iv) In determining the percentages of adult recipients residing in political subdivisions of a State, for purposes of this section, adult members of Indian Tribes and Alaska Native organizations who reside within the service area of a Tribal JOBS program, pursuant to § 250.90, will not be counted.

(2) The justification must include the following:

(i) The number of adult recipients that would be excluded and a comparison of:

(A) The estimated average annual unit cost per participant were the JOBS program extended to excluded areas with

(B) The estimated average annual unit cost per JOBS participant in the included areas;

(ii) A description of the local economic conditions that make operation of the program in such areas infeasible; and

(iii) Whether the State expects to expend all of its limit of entitlement, pursuant to § 250.70, for the period covered by the JOBS plan.

§ 250.12 Coordination and consultation.

State IV-A agencies are required to assure coordination of JOBS program services, including child care and supportive services pursuant to § 255.3(h) of the regulations, with related services provided by other agencies.

(a) The Governor shall assure that JOBS program activities are coordinated with programs under the Job Training Partnership Act (JTPA) and with any other relevant employment, training, and education programs available within the State. At a minimum, this means that the appropriate job training and preparation components of the State JOBS plan shall be consistent with the coordination criteria specified in the Governor's coordination and special services plan required under section 121 of the JTPA.

(b) In developing the JOBS plan and carrying out the JOBS program, including the supportive services provisions, the State IV-A agency must consult and coordinate with other providers, including those specified in paragraph (c) of this section, to identify existing resources to prevent duplication of services, assure that other program services are available to enable participants to achieve self-sufficiency, and assure that costs for these other services for which welfare recipients have been eligible are not incurred by the JOBS program pursuant to § 250.72.

(c) At a minimum, the State IV-A agency must consult and coordinate with:

(1) The State agency responsible for JTPA;

(2) The State agency responsible for the Employment Service;

(3) The State education agency for programs under the Adult Education Act (20 U.S.C. 1201 *et seq.*) and Carl D. Perkins Vocational Education Act (20 U.S.C. 2301 *et seq.*);

(4) The State agencies responsible for child care activities as described in § 255.3(h); and

(5) The State agencies responsible for public housing.

(d) The State IV-A agency and local welfare agencies, as appropriate, must consult with the private industry councils (as established under section 102 of the JTPA):

(1) On the development of arrangements and contracts under JOBS, as described in § 250.13, and under the JTPA; and

(2) To identify and obtain advice on the types of jobs available, or likely to become available, in the area. The State IV-A agency must ensure that JOBS provides training for the types of jobs which are, or are likely to become, available in the area, and that resources are not expended on training for jobs that are not likely to become available.

(e) The State IV-A agency must exchange information with an eligible Indian Tribe or Alaska Native organization which submitted an application to the Department by April 13, 1989 to operate a separate JOBS program under § 250.91.

(1) This information includes available data on adult Tribal or Alaska Native organization AFDC recipients necessary to determine a Tribe or organization's JOBS funding level and designated service area, as appropriate, as described in § 250.93(b). State and Tribal and Alaska Native organization representatives receiving such AFDC recipient data must follow comparable standards of confidentiality as described in § 250.93(b).

(2) Since the State IV-A agency maintains responsibility for providing basic AFDC program services, such as eligibility notifications, and child care funds or services to participants in a Tribal JOBS program, the State and such grantee must coordinate interre-

lated activities as described in § 250.94(a) and part 255.

§ 250.13 Contracting authority.

The State IV-A agency shall carry out the JOBS program directly or through arrangements or under contracts with administrative entities under section 4(2) of the Job Training Partnership Act (JTPA), with State and local educational agencies, and with other public agencies, Indian Tribes or Alaska Native organizations or private organizations (including community-based organizations as defined in section 4(5) of the JTPA).

(a) Arrangements and contracts entered into under this section may cover any service or activity (including outreach, information and referral) to be made available under the JOBS program. Such contracted service or activity must be consistent with the requirements under § 250.10 and must not otherwise be available on a nonreimbursable basis, as specified in § 250.72(c).

(b) The State IV-A agency must consult with the private industry councils on the development of arrangements and contracts under JOBS pursuant to § 250.12.

(c) In selecting service providers, the State IV-A agency must take into account appropriate factors which may include past performance in providing similar services, demonstrated effectiveness, fiscal accountability, cost efficiency, ability to meet performance standards, and such other factors as the State IV-A agency may determine to be appropriate.

(d) For purposes of claiming FFP, the State IV-A agency must segregate costs by the applicable matching rates, as defined at § 250.73(b)(1), in any arrangement or contract entered into under this section.

(e) Services contracted under JOBS are subject to the requirements of part 92, excluding the provisions at § 92.30(d)(4).

Subpart C—State Plan Requirements and Content

§ 250.20 Requirement for a State JOBS plan.

(a) As a condition of participation in the AFDC program, the agency responsible for administering or supervising the administration of the IV-A plan must:

(1) No later than October 1, 1990, establish and operate a JOBS program under a JOBS plan that has been approved by the Secretary before implementation and that meets the requirements of this Part;

(2) Submit its initial JOBS plan to the Secretary for review and action at least 45 days prior to the anticipated implementation date; and

(3) Submit its initial Supportive Services plan, in accordance with §§ 255.1 and 256.1 concurrent with the initial JOBS plan, except that a State which has not submitted a JOBS plan prior to April 1, 1990, must submit a Supportive Services plan for transitional child care in accordance with § 256.1 at least 45 days prior to implementation.

(b) The initial JOBS plan and Supportive Services plan will be subject to prior approval by the Secretary. FFP will only be available for expenditures incurred after approval by the Secretary.

(c) A State JOBS plan and Supportive Services plan must be submitted to:

(1) The Governor for review and comment; and

(2) The State Job Training Coordinating Council (SJTCC) and the State education agency for review and comment at least 60 days prior to submittal to the Secretary. The plan shall be published and otherwise made reasonably available through local news facilities and public announcements, to the general public, including members of federally-recognized Tribes and Alaska Native organizations in the State, for review and comment, concurrent with submittal to the SJTCC and the State education agency. Comments received shall be resolved by the State.

(d)(1) State JOBS plans and Supportive Services plans submitted to the Secretary prior to the issuance of the JOBS and Supportive Services plan preprints shall be considered interim plans.

(2)(i) A State operating a JOBS program and providing supportive services under interim plans shall submit a new JOBS plan and a new Supportive Services plan for approval within 90 days of the date that JOBS and Supportive Services plan preprints are issued by the Secretary.

(ii) The new JOBS and Supportive Services plans must be submitted for public review and comment pursuant to the provisions of paragraph (c) no later than 30 days prior to submittal to the Secretary, if substantial changes to the interim plans have been made.

(iii) Interim plans shall remain in force until formal action on the new plans is taken (i.e., approval or disapproval) by the Secretary.

(e)(1) The State must submit an update of its JOBS and Supportive Services plans to the Secretary for approval not less than every two years. The update shall be considered a new JOBS plan and Supportive Services plan, and shall be submitted to the Secretary for approval at least 90 days prior to beginning of the next biennial period. The State must follow the public review and comment provisions in paragraph (c).

(2) The update must consist of:

(i) Assurances regarding those parts of the State JOBS Plan and Supportive Services plan that remain unchanged;

(ii) A description of any changes in program operations including but not limited to changes in components and target populations served;

(iii) An estimate of the number of persons to be served by the program during the next biennium and the availability of services provided by the State IV-A agency as well as other providers; and

(iv) An assurance that the State JOBS plan is consistent with the coordination criteria specified in the current Governor's Coordination and Special Services Plan required under section 121 of the JTPA.

(3)(i) For all States the first biennial update must be submitted by July 1, 1992, for the period beginning October 1, 1992. As an alternative, a State may submit its first biennial update by April 1, 1992 for the period beginning July 1, 1992. A State which elects to submit its biennial update on April 1, 1992 for the period beginning July 1, 1992 must show in the update that it will have a Statewide program by October 1, 1992.

(ii) A State JOBS plan and Supportive Services plan approved pursuant to paragraph (d)(2) shall remain in force until formal action is taken (i.e., approval or disapproval) by the Secretary on the first biennial update.

(iii) Each approved biennial update shall remain in force until formal action is taken (i.e., approval or disapproval) by the Secretary on the update for the following biennial period.

(f)(1) The State shall submit proposed amendments to approved plans as necessary and they shall be reviewed according to the process described at §§ 201.3(f) and 201.3(g).

(2) A plan amendment is necessary if the State makes changes which affect eligibility for services or requirements to participate, or makes changes in program design that alter the nature of the program.

(g) A State that submits a plan, an amendment to an existing plan, or a biennial update that is not approvable will be given the opportunity to make revisions before formal disapproval; upon formal disapproval, a State may request a hearing pursuant to the process set forth in § 201.4 and part 213.

§ 250.21 State plan content.

A State's JOBS plan must contain the following:

(a) Assurances that:

(1) The title IV-A agency will, upon approval of the JOBS plan by the Secretary, have in effect and operation:

(i) A JOBS program that meets the requirements of section 402(a)(19) and title IV-F of the Act; and

(ii) A program for providing child care and other supportive services consistent with the requirements of the Act and with the State's separate Supportive Services plan, pursuant to §§ 255.1 and 256.1;

(2) The JOBS program will meet all statutory and regulatory requirements;

(3) To the extent that the program is available in a political subdivision of a State and the State's resources otherwise permit, the State will require non-exempt recipients for whom the State guarantees child care in accordance with § 255.2(a) to participate;

(4) Individuals are not discriminated against on the basis of race, sex, national origin, religion, age, or handicapping condition in assignment to training and education developed under the JOBS program;

(5) In assigning participants to any JOBS program activity the State agency will comply with the provisions of section 484(a) of the Act;

(6) Benefits and services provided under the programs in part A, part D, and part F of title IV of the Act are furnished in an integrated manner;

(7) Services provided by the State IV-A agency are not otherwise available on a non-reimbursable basis, as required by § 250.72(e);

(8) All applicants for and recipients of aid are encouraged, assisted, and required to fulfill their responsibilities to support their children by preparing for, accepting, and retaining such employment as they are capable of performing;

(9) State and local funds expended for such purpose shall be maintained at least at the level of such expenditures for the FY 1986. The FY 1986 level must be identified;

(10) Federal funds made available to a State for purposes of the program shall not be used to supplant non-Federal funds for existing services and activities which promote the purpose of part F of title IV of the Act.

(b) Information about overall implementation of the State's JOBS program:

(1) A statement of the goals and objectives of the State JOBS program, and a description of how the State intends to implement the program during the biennium to support those goals and objectives;

(2) A description of the administrative structure for the JOBS program;

(3) A description of the contracting process that will be used to deliver services for the State IV-A agency, pursuant to § 250.13, including:

(i) Types of services to be provided under contract;

(ii) Types of contracts used;

(iii) Types of providers;

(4) If the State program is less than statewide, identification of subdivisions to be included or excluded. For any period after September 30, 1992, for which the State does not meet the criteria at § 250.11(c)(1), justification as described at § 250.11(c)(2);

(5) If the State proposes to serve target populations other than those described at § 250.1,

(i) The characteristics of the caseload in the State that make it infeasible to meet the requirements of § 250.74(a)(1); and

(ii) The long-term or potential long-term recipients that the State is targeting instead of those described at § 250.1.

(6) A description of the State's dispute resolution process including:

(i) A description of the conciliation process including:

(A) Length of conciliation; and

(B) The entity responsible for conciliation;

(ii) A description of an alternative fair hearing process the State uses for the JOBS program, if any;

(iii) A description of the grievance procedure for resolving complaints by regular employees pursuant to section 484(d) of the Act.

(c) The options for participation which the State elects including:

(1) Lowering the age of the youngest child (but no less than one) for the exemption pursuant to § 250.30(b)(9)(i);

(2) Making exemptions in § 250.30 (b)(9)(i) and (b)(9)(ii) inapplicable to both parents and requiring their participation if child care is guaranteed in accordance with part 255;

(3) Limiting exemptions in § 250.30 (b)(9)(i) and (b)(9)(ii) to the parent who is not the principal earner;

(4) Establishing minimum standards for work that qualifies an individual for the exemption at § 250.30(b)(7);

(5) Making supplemental payments if a family would experience a net loss of cash income resulting from accept-

ance of a job, pursuant to § 250.35(c). A State must describe what necessary and reasonable expenses it uses to calculate "net loss of cash income;"

(6) Allowing a parent under age 25 who has not completed high school or an equivalent course of education to meet the unemployed parent program 16-hour work requirement by participating in educational activities.

(d) A description of program operations to include the following:

(1) A description of the client flow process;

(2) For each required component and each optional component a State elects (including all components in §§ 250.46, 250.47, and 250.48):

(i) A description of the services to be provided in the component;

(ii) The extent to which such services will be:

(A) Available on a non-reimbursable basis;

(B) Provided directly or funded by the State IV-A agency;

(iii) The extent to which such services will be provided in each political subdivision covered by the State JOBS program;

(3) If the State elects to use a case management system pursuant to § 250.43, a description of the case management system to include:

(i) How case management services will be delivered and by what entities; and

(ii) If not used statewide, description of methods by which individuals will be assigned a case manager;

(4) If the State elects to use agreements or contracts with participants, pursuant to § 250.42, a description of how they will be used, including, if not used statewide, how the State will determine for whom they will be used;

(5) If the State elects to offer an alternative work experience component pursuant to § 250.63, a description of potential sponsors, types of activities, the hours and duration of participation that will be required, target populations, and how the program differs from CWEP;

(6) If the State elects to design a work program for unemployed parents, pursuant to § 250.33, a description of the program including an assurance that the State has not substituted education or training activities for the work requirement;

(7) If the State elects to operate a work supplementation component pursuant to § 250.62, which of the following options it elects and, if appropriate, what the policy is with respect to:

(i) Exempting individuals holding supplemented jobs from the retrospective budgeting requirements at Part 233 and monthly reporting;

(ii) Varying the standard of need by subdivision in which the work supplementation component is in operation;

(iii) Varying the standard of need for different categories of recipients on the basis of ability to participate in the program;

(iv) Making any other adjustment in the amount of aid paid under the title IV-A plan to different categories of recipients pursuant to § 250.62(i)(3);

(v) Reducing or eliminating the amount of earned income to be disregarded from participation in a supplemented job;

(vi) Varying the number of months (up to nine) the State applies the $30 and one-third or the $30 disregard;

(vii) Using a sampling methodology to determine the amounts to be reserved and used for providing and subsidizing jobs pursuant to § 250.62(m);

(8) Description of any State limits or restrictions upon postsecondary educational services, with respect to the subject matter of the education or training offered, length of program, characteristics of the institution, and length of coverage under JOBS (if different from length of program), for:

(i) Postsecondary education to which the State refers a JOBS participant under § 250.46.

(ii) Self-initiated education or training under § 250.48(a) for which the State provides child care or supportive services.

(9) Criteria established for:

(i) Determining the inappropriateness of educational activities for custodial parents aged 18 or 19 who are to be placed in training or work activities in lieu of educational activities under § 250.32(a)(3);

(ii) Assigning an individual aged 20 or over who does not have a high school diploma or the equivalent to educational activities under § 250.32(b);

(iii) Approving postsecondary educational activities under § 250.46, if the State elects to refer participants to such education; and

(iv) Approving self-initiated education or training under § 250.48(a).

(10) If the State elects to excuse custodial parents under 18 years of age from educational activities, the criteria in accordance with § 250.32;

(11) If the State elects to define "basic literacy level" as higher than the grade 8.9 floor defined at § 250.1, the State's definition;

(12) The State's definition of other "good cause" for failure to participate in accordance with § 250.35(d). At a minimum this must include circumstances that are beyond a household's control;

(13) If a State elects to provide case management services to an individual who loses eligibility for AFDC after she accepts employment, the length of time up to 90 days for which services will be provided;

(e) A description of the nature of coordination with public and private agencies and organizations as described at § 250.12. This must include:

(1) Identification of specific existing resources that are available and appropriate for participants in the State JOBS program;

(2) A description of coordination and consultation in the development of the State JOBS plan;

(3) A description of how the State JOBS plan is consistent with the coordination criteria specified in the Governor's coordination and special services plan, pursuant to § 250.12(a);

(4) The results of consultation with private industry councils to assure that training and educational activities under JOBS are directed toward jobs that are available or likely to become available;

(f) Annual estimates of the numbers of persons to be served on a monthly basis during the biennium covered by the plan, and;

(g) Other information needed to clarify how the State has chosen to implement its JOBS program in accordance with title II of the Family Support Act of 1988 and implementing regulations.

Subpart D—Participation Requirements, Exemptions and Sanctions

§ 250.30 Requirements for individual participation and exemptions.

A State JOBS plan must provide that:

(a) Where State resources otherwise permit, all recipients of AFDC who live in a subdivision covered by a JOBS program and for whom the State IV-A agency has guaranteed child care in accordance with Part 255 shall be required to participate in JOBS except as provided under paragraph (b) of this section.

(b) An individual shall be considered exempt and not be required to participate if she:

(1) Is a child who—

(i) Is under age 16, or

(ii) Attends, full-time, an elementary, secondary, vocational or technical school (except that such school attendance as a required JOBS activity for a child who loses this exemption will not requalify the child for the exemption);

(2) Is ill, when determined by the State on the basis of medical evidence or another sound basis that the illness or injury is serious enough to temporarily prevent entry into employment or training;

(3) Is incapacitated, when verified by the State that a physical or mental impairment, determined by a physician or a licensed or certified psychologist, prevents the individual from engaging in employment or training under JOBS. This may include a period of recuperation after childbirth if prescribed by a woman's physician;

(4) Is 60 years of age or older;

(5) Resides in a subdivision of the State where the JOBS program is available, but in a location which is so remote from a JOBS program or activity that effective participation is precluded. The individual shall be considered remote if a round trip of more than 2 hours by reasonably available public or private transportation, exclusive of time necessary to transport children to and from a child care facil-

ity, would be required for a normal work or training day. However, if normal round trip commuting time in the area is more than 2 hours, then the round trip commuting time shall not exceed the generally accepted community standards;

(6) Is needed in the home because another member of the household requires the individual's presence due to illness or incapacity as determined by a physician or a licensed or certified psychologist, and no other appropriate member of the household is available to provide the needed care;

(7) Is working 30 or more hours a week. The State IV-A agency may establish minimum standards in its JOBS plan for work that qualifies an individual for this exemption;

(8) Is pregnant, and it has been medically verified that the child is expected to be born in the month in which participation would be required or within the following six-month period;

(9)(i) Subject to paragraph (b)(9)(iv), is the parent or other relative of a child under 3 years of age (or an age less than 3 but not less than 1, if the State plan so provides) who is personally providing care for the child; or

(ii) Subject to paragraph (b)(9)(iv), is the parent or other relative personally providing care for a child under 6 years of age, unless the State IV-A agency assures that child care will be guaranteed and that participation in the program by the parent or relative will not be required for more than 20 hours per week.

(iii) Only one parent or other relative in a case may be exempt under paragraph (b)(9)(i) or paragraph (b)(9)(ii) of this section.

(iv) In the case of a family eligible for AFDC by reason of the unemployment of the parent who is the principal earner, only one parent may be exempt under paragraph (b)(9)(i) or paragraph (b)(9)(ii) of this section. The State IV-A agency may:

(A) Limit the exemptions in paragraph (b)(9)(i) and paragraph (b)(9)(ii) of this section to the parent who is not the principal earner;

(B) Make the exemptions in paragraph (b)(9)(i) and paragraph (b)(9)(ii) of this section inapplicable to both parents and require their participation in the program if child care in accordance with Part 255 is guaranteed with respect to the family; or

(10) Is a full-time volunteer serving under the Volunteers In Service To America (VISTA) program, pursuant to Title I of the Domestic Volunteer Service Act of 1973;

(c)(1) The State IV-A agency shall reevaluate any exemption at such time as the condition is expected to terminate but no less frequently than at each redetermination of AFDC eligibility;

(2) The State IV-A agency shall promptly notify the recipient and any appropriate service providers of any change in the recipient's exemption status.

§ 250.31 Volunteers.

The State IV-A agency must provide that applicants for and recipients of AFDC who are exempt under § 250.30 from participation in the program or who are not otherwise required by the State IV-A agency to participate will be allowed to do so on a voluntary basis to the extent that the program is available in the applicable political subdivision and State resources otherwise permit.

(a) The State IV-A agency shall give first consideration to applicants for or recipients of AFDC who volunteer to participate in determining the priority of participation within the target populations described at § 250.1.

(b) When an individual who volunteers to participate stops participating in the program without good cause as defined at § 250.35,

(1) If she has been determined to be exempt pursuant to § 250.30, she shall not be given priority to participate so long as other individuals are actively seeking to participate.

(2) If she has been determined not to be exempt pursuant to § 250.30, she shall be subject to sanction as described at § 250.34.

§ 250.32 Participation requirements for education.

(a) To the extent that the program is available in the political subdivision involved and State resources otherwise permit, in the case of a custodial parent who is not yet 20 years of age, has not completed a high school education (or its equivalent) and is not exempt from participation under § 250.30(b), the State shall require such a parent to participate in educational activities as described in § 250.44(a)(1). For purposes of this section, custodial parent means the parent who lives with the child, including custodial parents who would otherwise be exempt under § 250.30(b)(9) because of the age of the youngest child.

(1) The State IV-A agency may require full-time participation (as defined by the educational provider) in educational activities directed toward the attainment of a high school diploma or its equivalent. This includes individuals who would otherwise only have to participate on a part-time basis because their youngest child is under 6 years of age.

(2) The State IV-A agency may excuse a custodial parent who is under age 18 from the school attendance requirement if such parent is determined to be beyond the State's compulsory attendance requirements and if the State's JOBS plan contains criteria for making this determination. The State's criteria must:

(i) Provide that each determination is based upon an individual assessment of the parent rather than upon the application of categorical exemptions;

(ii) Not rely solely upon grade completion; and

(iii) Provide for participation in another educational activity as defined under § 250.44(a) or in skills training activities under § 250.44(b) that are combined with education.

(3) The State IV-A agency may require a custodial parent who is age 18 or 19, and required to participate in JOBS under this section, to participate in training or work activities (subject to the 20-hour limit in § 250.30(b)(9)(ii)) instead of educational activities described at § 250.44(a) if one of the following conditions is met:

(i) Such parent fails to make good progress in successfully completing educational activities, or

(ii) Prior to any assignment of the individual to such educational activities it is determined, based on an educational assessment and the employment goal established in the individual's employability plan, that participation in educational activities is inappropriate for such parent.

(b) If a State IV-A agency requires an individual who has attained the age of 20 years and has not earned a high school diploma (or its equivalent) to participate in JOBS, the State agency shall include educational activities consistent with her employment goals as a component in the individual's employability plan. Any other services or activities may not be permitted to interfere with her participation in appropriate educational activities under § 250.44. However, a State IV-A agency may elect not to require an individual to participate in educational activities if:

(1) The individual demonstrates a basic literacy level; or

(2) The long-term employment goal of the individual, as identified by the State IV-A agency in her employability plan, does not require a high school diploma (or equivalent).

§ 250.33 Participation requirements for unemployed parents.

(a) The State IV-A agency shall require that at least one parent, in any family eligible for AFDC by reason of the unemployment of the parent who is the principal earner, participate for a total of at least 16 hours a week in a work supplementation program, a community work experience program, or other work experience program, on-the-job training, or a State-designed work program described in the State JOBS plan and approved by the Secretary. A State-designed work program may not substitute education or training activities for the work requirement.

(b) In the case of a parent under age 25 who has not completed high school or an equivalent course of education, the State IV-A agency may require the individual to participate in educational activities as defined at § 250.44(a) in lieu of one or more of the programs specified in paragraph (a). An individual meets the participation requirements of this section if he or she is making satisfactory progress as defined at § 250.1.

(c) An individual participating in a community work experience program under § 250.63 shall be considered to have met the participation requirement in paragraph (a) if the individual participates for the maximum number of hours in any month calculated in accordance with § 250.63(d)(1).

§ 250.34 Sanctions.

(a)(1) When an AFDC recipient who is required to participate in the JOBS program, including those individuals required to participate because the State IV-A agency exercised its option under § 250.30(b)(9)(iii), fails to comply (i.e., fails without good cause to participate in the program, refuses without good cause to accept employment, or terminates employment or reduces earnings without good cause), the sanctions in paragraph (c) of this section shall apply during the following periods:

(i) For the first such failure to comply, until the failure to comply ceases;

(ii) For the second such failure to comply, until the failure to comply ceases, or 3 months, whichever is longer; and

(iii) For any subsequent failure to comply, until the failure to comply ceases, or 6 months, whichever is longer.

(2) Failure to participate in the program includes failure to meet State IV-A agency requirements for orientation, assessment, employability development planning, or case management.

(b) For the purpose of determining that an individual's failure to comply has ceased, a State IV-A agency may require the individual to participate in the activity to which she was previously assigned or an activity designed by the State to lead to full participation for a period of up to two weeks before terminating the sanction. During such participation, the individual shall be eligible for child care and support services which the State determines are necessary for participation. If she successfully participates in such activities, the sanction will be considered to have terminated as of the day she agreed to participate. If no such activity is available, the sanction will terminate on the day she agrees to participate.

(c) During the sanction period:

(1) The State IV-A agency will not take into account the individual's needs in determining the family's need for assistance and the amount of the assistance payment.

(2) If the individual is a parent whose family is eligible in accordance with § 233.100, the State IV-A agency will not take into account the needs of the second parent in determining the family's need for assistance and the amount of the assistance payment unless the second parent is participating in the JOBS program.

(3) If the individual is the only dependent child, the State IV-A agency will not take into account the individual's needs in determining the family's need for assistance and the amount of the assistance payment.

(d) If such individual is a parent or other caretaker relative, payments for the remaining members of the assistance unit will be in the form of protective or vendor payments in accordance with § 234.60(a)(12). However, if after making reasonable efforts the State IV-A agency is unable to locate an appropriate individual to whom protective payments can be made, the State may continue to make payments on behalf of the remaining members of the assistance unit to the sanctioned caretaker relative.

(e) The State IV-A agency will promptly remind in writing any individual whose failure or refusal has continued for 3 months of the individual's option to end the sanction. The notice shall advise that:

(1) She may immediately terminate the first or second sanction by participating in the program or accepting employment; and

(2) She may terminate any subsequent sanction after six months have elapsed by participating in the program or accepting employment.

§ 250.35 Good cause.

For the purposes of § 250.34(a), good cause for failure to participate in the program or refusal to accept employment shall be found if:

(a) The individual is the parent or other relative personally providing care for a child under age 6 and the employment would require such individual to work more than 20 hours per week;

(b) Child care (or day care for any incapacitated individual living in the same home as a dependent child) is necessary for an individual to participate or continue participation in the program or accept employment and such care is not available and the State agency fails to provide such care;

(c)(1) The employment would result in the family of the participant experiencing a net loss of cash income. A participant may not claim good cause under this paragraph if the State IV-A agency assures that the family will not experience a net loss of cash income by making a supplemental payment;

(2) Net loss of cash income results if the family's gross income less necessary work-related expenses is less than the cash assistance the individual was receiving at the time the offer of employment is made. Gross income includes, but is not limited to, earnings, unearned income and cash assistance; or

(d) The individual meets other grounds for good cause set forth by the State IV-A agency in its JOBS plan. At a minimum, the State must describe what circumstances beyond the household's control will constitute "good cause."

§ 250.36 Conciliation and fair hearings.

(a) Each State IV-A agency shall establish a conciliation procedure to resolve disputes related to an individual's participation in the JOBS Program.

(b) Once conciliation ends and the notice of adverse action has been issued, the individual may contest the proposed sanction. If she contests and loses, or does not contest, then a sanction will be imposed for the appropriate time period.

(c) If a dispute is not resolved through conciliation, the State shall provide the individual with an opportunity for a hearing. The hearing process may follow the provisions of § 205.10. Alternatively, the hearing process may be established for the JOBS program. However, assistance may not be suspended, reduced, discontinued, or terminated as a result of a dispute involving an individual's participation in JOBS unless the hearing meets the due process standards set forth by the U.S. Supreme Court in *Goldberg* v. *Kelly*, 397 U.S. 254 (1970).

Subpart E—Operation of State JOBS Programs/Program Components

§ 250.40 Providing program information to AFDC applicants and recipients.

(a) The State IV-A agency must at the time of application or redetermination inform all AFDC applicants and recipients, in writing and orally as appropriate, of the availability of the program activities and the supportive services for which they are eligible, and agency and participant responsibilities, including:

(1) Education, employment, and training opportunities available under the JOBS plan;

(2) Supportive services, including, but not limited to, child care during participation, transitional child care, health coverage transition options pursuant to section 1925 of the Act, and transportation and other work-related supportive services provided under the JOBS plan;

(3) The obligations of the State IV-A agency including the program and supportive services to be provided, as described in paragraphs (a) (1) and (2) of this section;

(4) The rights, responsibilities, and obligations of participants in the program, including but not limited to, the grounds for exemptions from participation and the consequences for refusing or failing to participate (including the effect on volunteers as described in § 250.31);

(5)(i) The types and locations of child care services reasonably accessible to participants in the program. Such information may be provided directly or through arrangement with others such as the appropriate human services or resource and referral agency;

(ii) The assistance that is available to help participants select appropriate child care services; and

(iii) The assistance available, on request, to help participants obtain child care services.

(b) The agency must also inform applicants and recipients of their responsibility to cooperate in establishing paternity and enforcing child support obligations, as described in Part 232, and must assist individuals in obtaining the paternity establishment and child support services for which they may be eligible.

(c)(1) After the State IV-A agency gives an AFDC applicant the information described in paragraphs (a) and (b) of this section, the State IV-A agency must notify the individual, in writing, within one month of the determination of eligibility, of the opportunity to indicate her desire to participate in the program and provide a clear description of how to enter the program.

(2) After the State IV-A agency gives an AFDC recipient the information described in paragraphs (a) and (b) of this section, the State IV-A agency must notify the individual, in writing, within one month of providing that information, of the opportunity to indicate her desire to participate in the program, and provide a clear description of how to enter the program.

(3) The notification provision in paragraphs (c)(1) and (c)(2) of this section does not prohibit the State IV-A agency from requiring non-exempt recipients, or applicants in the case of job search, to participate in the JOBS program prior to the one-month notice.

(4) If a non-exempt individual indicates a preference not to participate, in response to such notification under paragraphs (c)(1) or (c)(2) of this section, such a preference does not prevent the State IV-A agency from otherwise requiring participation in JOBS.

§ 250.41 Initial assessment and employability plan.

(a)(1) Within a reasonable time period prior to participation the State IV-A agency must make an initial assessment of employability based on:

(i) The individual's educational, child care, and other supportive services needs;

(ii) The individual's proficiencies, skills deficiencies, and prior work experience;

(iii) A review of the family circumstances, which may include the needs of any child of the individual; and

(iv) Other factors that the State IV-A agency determines are relevant in developing the employability plan, as described in paragraph (b) of this section.

(2) The State IV-A agency may conduct the initial assessment through various methods such as interviews, testing, counseling and self-assessment instruments.

(b) On the basis of the assessment described in paragraph (a) of this section, the State IV-A agency must develop an employability plan in consultation with the participant, including a participant in a self-initiated activity pursuant to § 250.48 of this Part.

(1) The employability plan must:

(i) Contain an employment goal for the participant;

(ii) Describe the services to be provided by the State IV-A agency, including child care and other supportive services pursuant to Part 255;

(iii) Describe the JOBS activities, as provided in Subpart E of this Part, that will be undertaken by the participant to achieve the employment goal; and

(iv) Describe any other needs of the family, pursuant to paragraph (a)(1)(iii), that might be met by JOBS, such as participation by a child in drug education or in life skills planning sessions.

(2) The employability plan shall take into account:

(i) Available program resources;

(ii) The participant's supportive services needs;

(iii) The participant's skills level and aptitudes;

(iv) Local employment opportunities; and

(v) To the maximum extent possible the preferences of the participant.

(3) The employability plan shall not be considered a contract.

(4) Final approval of the plan rests with the State IV-A agency.

§ 250.42 Agency-participant agreement.

(a) Following the initial assessment and the development of the employability plan as described in § 250.41, the State IV-A agency may require the participant (or the adult caretaker in the family of which the participant is a member) to negotiate and enter into an agreement with the State IV-A agency.

(1) Such agreement should indicate at a minimum:

(i) The purpose of the agreement;

(ii) The participant's obligations under the program;

(iii) The length of participation in the program, including the number of hours of participation per week; and

(iv) The educational, training and employment activities, and the supportive services, including child care, to be provided by the agency during the period of participation.

(2) If the State IV-A agency elects this option, it must give the participant such assistance as she may need to review and understand the agreement.

(3) This agreement may be considered a contract between the State IV-A agency and the JOBS participant, pursuant to applicable State laws and regulations.

(b) If the State IV-A agency elects to use agreements or contracts, it does not have to use them in all political subdivisions having JOBS programs. The State IV-A agency, however, must apply this provision to participants on an equitable basis.

§ 250.43 Case management.

(a) The State IV-A agency may assign a case manager to a participant and the participant's family. The decision to assign a case manager may be made on a case-by-case basis.

(b) The case manager must be responsible for assisting the family to obtain any services that may be needed to assure effective participation in the program.

§ 250.44 Mandatory components.

A State's JOBS program must include the following four services and activities. The State IV-A agency need not make each service or activity a discrete offering, but may combine several into a single program activity, provided that the State IV-A agency can adequately distinguish the principal components for the purpose of Federal reporting requirements. The required services and activities are:

(a) Any educational activity below the postsecondary level that the State IV-A agency determines to be appropriate to the participant's employment goal. Such activities may be combined with training that the State IV-A agency determines is needed in relation to the participant's employability plan. The educational activities that must be made available include, but are not limited to:

(1) High school education or education designed to prepare a person to qualify for a high school equivalency certificate;

(2) Basic and remedial education that will provide an individual with a basic literacy level, equivalent to at least grade 8.9; and

(3) Education in English proficiency for an individual who is not sufficiently competent to understand, speak, read, or write the English language to allow employment commensurate with her employment goal;

(b) Job skills training, which includes vocational training for a participant in technical job skills and equivalent knowledge and abilities in a specific occupational area;

(c) Job readiness activities that help prepare participants for work by assuring that participants are familiar with general workplace expectations and exhibit work behavior and attitudes necessary to compete successfully in the labor market; and

(d) Job development and job placement activity by the agency, in soliciting a public or private employer's unsubsidized job opening or in discovering such job openings, and the marketing of participants, and securing job interviews for participants.

§ 250.45 Optional components.

A State JOBS program must include, but is not limited to, at least two of the following four components:

(a) Group and individual job search, as described in § 250.60;

(b) On-the-job training, as described in § 250.61;

(c) Work supplementation, as described in § 250.62; and

(d) Community work experience program, or other approved work experience program, as described in § 250.63.

§ 250.46 Postsecondary education.

A State's JOBS program may include referral of a participant to postsecondary education, as determined necessary to meet any individual goals that are directly related to obtaining useful employment in a recognized occupation, within limits established by the State IV-A agency and reflected in the State JOBS plan. In accordance with § 233.20(a)(2)(v), the costs of such education, including tuition, books and fees, do not qualify for FFP as special needs.

§ 250.47 Other education, training, and employment activities.

(a) A State's JOBS program may include education, training, and employment activities other than those described in §§ 250.44 through 250.46, but which are included in the approved State JOBS plan.

(b) In no event will a State program of public service employment be approved under JOBS. Public service employment is fully-subsidized employment in a public agency.

§ 250.48 Self-initiated education or training.

(a) The State IV-A agency may allow a parent or other caretaker relative or any dependent child in the family who is attending in good standing an institution of higher education (as defined in section 481(a) of the Higher Education Act of 1965), or a school or other entity offering a course of vocational or technical training, at the time she would otherwise commence participation in the JOBS program, to continue to attend. Vocational or technical training leads to useful employment in a recognized occupation. It includes postsecondary education, as defined in § 250.1, that results in other than a baccalaureate or advanced degree, and such training offered by other entities such as public secondary schools and public and private entities that offer adult vocational education.

(1) Self-initiated activity qualifies as "self-initiated education or training" under this paragraph if:

(i) The participant is attending at least half-time as defined by the institution;

(ii) The participant is making satisfactory progress in such institution, school, or course;

(iii) The course of study is consistent with the individual's employment goal; and

(iv) The participant meets the State's criteria for determining the appropriateness of the self-initiated education or training.

(2)(i) The State IV-A agency must conduct an assessment and develop an employability plan, as provided at § 250.41, so that the State IV-A agency may determine the appropriateness of the education or training in accordance with the criteria it has established.

(ii) If the State IV-A agency approves the self-initiated education or training, any other JOBS activities in which such individual participates may not be permitted to interfere with the education or training activity. However, an individual may be required to accept employment after a review of her employability plan, if the State IV-A agency has informed her at the time it first approves the self-initiated activity that it could perform such a review and reassignment.

(3) The costs of self-initiated education or training under this paragraph shall not constitute federally reimbursable expenses under JOBS.

(4) A State IV-A agency may restrict postsecondary education or training in its State JOBS plan.

(5) The costs of child care, transportation, and other supportive services necessary for approved self-initiated education or training under this para-

graph are eligible for Federal reimbursement pursuant to § 255.4.

(b) If an individual in a JOBS area is enrolled in a self-initiated activity that does not meet the requirements of paragraph (a) of this section, the State may approve such activity as a JOBS activity according to the regulations and State criteria applicable to JOBS component activities covered under §§ 250.44 through 250.47. Eligibility for child care, transportation and other supportive services shall be in accordance with § 255.2.

Subpart F—[Reserved]

Subpart G—Optional Components of State JOBS Programs

§ 250.60 Job search program.

(a) A State IV-A agency may operate a job search program as a component of its JOBS program. A job search program may serve participants in either group or individual job-seeking activities.

(1) Individual job search includes the provision of counseling, job-seeking skills training, information dissemination and support on a one-to-one basis.

(2) Group job search includes the provision of counseling and training in a group setting where applicants or recipients are taught job-seeking skills, and may include a phone bank from which participants contact potential employers.

(b) In addition to non-exempt recipients, a State IV-A agency may require an individual applying for AFDC to participate in a job search component unless she is exempt under § 250.30(b).

(c) A State IV-A agency may require an individual to participate in a job search component from the date she files an application for aid for an initial period of up to eight consecutive weeks. Following this initial period (which may extend beyond the date when eligibility is determined), the State IV-A agency may require additional participation in a job search component not in excess of eight weeks (or its equivalent) in any period of 12 consecutive months. The first such period of 12 consecutive months shall begin at any time following the close of the initial period.

(1) A State IV-A agency may not delay the processing of an individual's application for aid because of her participation in job search.

(2) In no event may an individual be required to participate in job search for more than 3 weeks before the State IV-A agency conducts an assessment as provided at § 250.41. If the State IV-A agency determines based on the assessment that another JOBS activity is more appropriate, or is required by Part 250, the State IV-A agency shall terminate the job search requirement.

(d) Additional job search activities beyond those required in paragraph (c) may be required only as part of another educational, training, or employment component designed to improve the individual's employment prospects.

(e) Job search by an individual under this section shall in no event be treated, for any purpose, as an activity under JOBS if the individual has participated in such job search for 4 months (or its equivalent) out of the preceding 12 months.

§ 250.61 On-the-job training.

(a) A State IV-A agency may operate an on-the-job training (OJT) program as a component of its JOBS program. Under OJT a participant is hired by a private or public employer and while engaged in productive work receives training that provides knowledge or skills essential to the full and adequate performance of that job. The State IV-A agency or its agent shall enter into a contract with the OJT employer to reimburse the employer for providing training and additional supervision to the participant.

(b) Payments to an employer for on-the-job training shall not exceed an average of 50 percent of the wages paid by the employer to the participant during the period of such training.

(c) A participant in OJT shall be compensated by the employer at the same rates, including benefits and periodic increases, as similarly situated employees or trainees and in accord-

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ance with applicable law, but in no event less than the higher of the Federal minimum wage or applicable State or local minimum wage law.

(d) Wages paid to participants in OJT will be considered to be earned income for purposes of any provision.

(e) If a participant in OJT becomes ineligible for AFDC pursuant to the rules applicable to earned income at § 233.20, or pursuant to the 100-hour rule at § 233.100 in the case of a principal earner in an unemployed parent case, she shall remain a JOBS participant for the duration of the OJT and shall be eligible for supportive services under Part 255 available to other JOBS participants similarly situated.

(f) If the individual would have been eligible for transitional child care pursuant to Part 256 at the time the ineligibility for AFDC occurred, she shall be eligible for transitional child care after the OJT ends for the number of months that remain in the 12-month period following the month in which she became ineligible for AFDC after OJT ended. As an alternative, the State IV-A agency may treat all child care provided after an individual in an OJT job loses eligibility for AFDC as transitional child care if the individual meets the requirements at Part 256.

(g) The State IV-A agency must develop qualitative measures for making good or satisfactory progress, pursuant to § 250.1, in order for OJT to qualify as a component activity under JOBS.

§ 250.62 Work supplementation program.

(a) A State IV-A agency may operate a work supplementation program as a component of its JOBS program. Under the work supplementation program, a State IV-A agency may use AFDC funds to develop and subsidize jobs for AFDC recipients as an alternative to aid.

(b) A "supplemented job" is a job provided under this section to an eligible individual by the State or local agency administering the State IV-A plan or by any other employer for which all or part of the wages are paid by such State or local IV-A agency.

(1) The State IV-A agency may use whatever means it determines appropriate to provide or to subsidize jobs for participants.

(2) The State IV-A agency may provide or subsidize any type of job. It may determine the length of time the position is to be provided or subsidized, the amount of wages to be paid to the recipient, the amount of subsidy to be provided by the State or local IV-A agency, and the conditions of participation, except that no participant may be assigned to fill any established, unfilled position vacancy in accordance with section 484 of the Act.

(c)(1) An eligible individual is an individual who is in a category which the State IV-A agency determines should be eligible to participate in the work supplementation program, and who would, at the time of placement in the supplemented job, be eligible for AFDC if the State IV-A agency did not have a work supplementation program in effect. For the purpose of this section, time of placement is defined as the date on which the State IV-A agency and the employer reach agreement on the terms of the placement and the specific individual to be placed.

(2) The State may establish a work supplementation program as either a mandatory or voluntary program.

(d) A State or local IV-A agency administering the State plan is not required to provide employee status to any eligible individual to whom it provides a job position or with respect to whom it subsidizes all or part of the wages paid to such individual by another entity under this program, nor is it required to provide that eligible individuals filling job positions provided by other entities under such program be provided employee status by such entity during the first 13 weeks in which they fill such position.

(e) Participants in supplemented jobs will be paid wages which shall be considered to be earned income for purposes of any provision of law.

(f) The State IV-A agency may elect to calculate the amount of an eligible individual's residual (direct AFDC) grant, if any, at the time of placement in the supplemented job and base the amount of the residual grant (the AFDC grant minus earnings and other countable income) for the duration of the individual's participation in the supplemented job (in whole or part) on that calculation. Such a policy is known as "freezing the grant." If the individual becomes otherwise ineligible for AFDC benefits, the State IV-A agency may allow the individual to continue in the supplemented job and divert the AFDC grant to the wage pool, but the State IV-A agency shall not pay a residual grant to the individual.

(g) At State option, individuals who hold supplemented jobs may be exempt from the retrospective budgeting requirements at Part 233 and monthly reporting, and the amount of the aid which is payable to the family of any such individual for any month, or which would be so payable but for the individual's participation in a supplemented job, shall be determined on the basis of the income and other relevant circumstances in that month.

(h) If an individual in a supplemented job would have been eligible for transitional child care pursuant to Part 256 at the time the ineligibility for AFDC occurred, she shall be eligible for transitional child care after her supplemented job ends for the number of months that remain in the 12-month period following the month in which she became ineligible. In the alternative, the State IV-A agency may treat all child care provided after an individual in a supplemented job loses eligibility for AFDC as transitional child care if the individual meets the requirements at Part 256.

(i) A State IV-A agency may adjust the standard of need under the State IV-A plan as the State determines to be necessary and appropriate to carry out a work supplementation program. Such changes in the need standard may be made notwithstanding § 233.20.

(1) The standard of need in effect in those subdivisions of the State in which such program is in operation may be different from the need standard in effect in subdivisions in which such program is not available.

(2) The standard of need for categories of recipients of aid may vary among such categories as the State IV-A agency determines to be appropriate on the basis of ability to participate in the work supplementation program.

(3) A State IV-A agency may make further adjustments in the amount of aid paid under the title IV-A plan to different categories of recipients in order to offset increases in benefits from other government-provided, needs-related programs as the State IV-A agency deems necessary and appropriate to further the purpose of the work supplementation program.

(j) A State IV-A agency may reduce or eliminate the amount of earned income to be disregarded from participation in a supplemented job.

(k) Notwithstanding the time limitations on the $30 and one-third and the $30 disregard in § 233.20(a)(11), a State IV-A agency may allow a participant employed in a supplemented job to receive the $30 and one-third or the $30 disregards for one or more of the first nine months of such employment.

(l) Payments by the State IV-A agency to individuals or to entities providing jobs for recipients under the work supplementation program shall be expenditures incurred by the State IV-A agency for AFDC and shall not exceed the amount that would otherwise be payable under the title IV-A plan if the family of each individual employed in the program had received the maximum amount of aid payable to such a family with no income for a period of either 9 months or the length of the individual's employment in the program, whichever is less. (This amount is determined without regard to any adjustments made under paragraphs (i), (j), and (k), and for each month of participation, may be based upon the maximum amount that would otherwise have been payable for a month at the time of placement in the program).

(m) A State IV-A agency may determine the amounts to be reserved and used for providing and subsidizing jobs under this section by using a sampling methodology. The State IV-A agency must describe its sampling methodology in its JOBS plan.

§ 250.63 Community work experience program.

(a) A State IV-A agency may operate a community work experience program (CWEP) as a component of its JOBS program. The purpose of CWEP is to improve the employability of individuals not otherwise able to obtain employment by providing work experience and training to assist them to move promptly into regular public or private employment.

(b) The State IV-A agency shall provide coordination among a community work experience program, any program of job search, and the other employment-related activities under the JOBS program to insure that job placement will have priority over participation in CWEP, and that individuals eligible to participate in more than one program under JOBS are not denied AFDC on the grounds of failure to participate in one such program if they are actively and satisfactorily participating in another. The State IV-A agency may provide that part-time participation in more than one such program may be required where appropriate.

(c) Community work experience programs shall be limited to projects which serve a useful public purpose in fields such as health, social service, environmental protection, education, urban and rural development and redevelopment, welfare, recreation, public facilities, public safety, and day care.

(d)(1) The maximum number of hours that an individual may be required to work or undergo training (or both) in CWEP is the number of hours which would result from dividing the family's monthly grant amount by the greater of the Federal or the applicable State minimum wage.

(2) The portion of a recipient's aid for which the State is reimbursed by a child support collection (except for the $50 pass-through) shall be excluded in determining the maximum number of hours that she is required to work.

(e) Nothing contained in this section shall be construed as authorizing the payment of AFDC as compensation for work performed, nor shall a participant be entitled to a salary or to any work or training expense provided under any other provision of law by reason of her participation in a CWEP program.

(f) To the extent possible, a State IV-A agency shall take into account the prior training, experience and skills of a recipient in making appropriate work assignments.

(1) After each six months of an individual's participation in a community work experience program and at the conclusion of each assignment under such a program the State IV-A agency must provide a reassessment and revision, as appropriate, of the individual's employability plan.

(2) After an individual has been assigned to a position for a total of nine months, such individual may not be required to continue in that assignment unless the maximum number of hours of participation is no greater than the family's grant divided by the highest of:

(i) The Federal minimum wage; or

(ii) The applicable State minimum wage; or

(iii) The rate of pay for individuals employed in the same or similar occupations by the same employer at the same site.

The portion of a recipient's aid for which the State is reimbursed by a child support collection (not including the $50 pass-through) shall continue to be excluded in determining the number of hours that such individual may be required to work.

(g) Participants in CWEP may perform work in the public interest (which otherwise meets the requirements of this section) for a Federal office or agency with its consent, and notwithstanding 31 U.S.C. 1342, or any other provision of law, such agency may accept such services, but such participants shall not be considered to be Federal employees for any purpose.

(h) Nothing in this section or in any State plan approved under § 250.20 shall be construed to prevent a State IV-A agency from operating (on such terms and conditions and in such cases as the State IV-A agency may find to be necessary or appropriate) a community work experience program.

(i) CWEP participants must not fill established, unfilled position vacancies in accordance with section 484 of the Act.

(j) FFP is not available for:

(1) Capital expenditures, depreciation or use allowances in connection with a CWEP;

(2) The cost of making or acquiring materials or equipment in connection with participation in a project; or

(3) The cost of supervision of participants.

(k) The State IV-A agency may offer any other work experience program which is described in the JOBS plan and approved by the Secretary.

(1) The program narrative for such a program should include a description of the potential sponsors, the type of activities, the hours or length of participation required, target group(s), and how the program is different from CWEP.

(2) The limitations on FFP for CWEP in paragraph (j) apply to all State work experience programs.

(3) Any other work experience program must meet the general program standards at section 484 of the Act.

Subpart H—Funding

§ 250.70 JOBS allocation entitlement.

(a) Federal matching for JOBS program expenditures is limited to a national total equal to the amounts established for each fiscal year in section 403(k)(3) of the Act.

(b) A State IV-A agency with an approved JOBS plan shall be entitled to payments from this annual limit. The maximum annual payment for a State will be the sum of two amounts:

(1) An amount equal to the State's WIN or WIN Demonstration allotment for fiscal year 1987; and

(2) An amount allocated from the balance of the annual national limitation on the basis of each State's relative average monthly number of adult recipients as defined at § 250.1.

(c) In accordance with § 92.23, JOBS funds allocated to a State IV-A agency for a given Federal fiscal year are for use during that fiscal year and must be obligated by the State no later than the end of the fiscal year. Carry forward of an unobligated balance of Federal funds to a succeeding Federal fiscal year is not permitted. An unobligated Federal fund balance at the close of a Federal fiscal year will be returned to the Federal government through the issuance of a negative grant award by the Department following receipt of the final quarterly expenditure report for the fiscal year.

(d) A State must liquidate all obligations incurred under the title IV-F grant awards not later than one year after the end of the fiscal year for which the funds were awarded and obligated. The Federal share of unliquidated obligations will be returned to the Federal government.

§ 250.71 Allotment of JOBS limit of entitlement.

(a) For a State IV-A agency that implements JOBS in a quarter of a fiscal year prior to October 1, 1990, the State's allotment from its JOBS limit of entitlement for that period will be proportional to the number of such quarters that JOBS is operational in that State in that fiscal year.

(b) An Indian Tribe or Alaska Native organization which receives the Secretary's approval to conduct a JOBS program shall receive a direct payment for operation of its JOBS program, without the requirement for a non-Federal share, pursuant to § 250.93.

(1) The amount of any such direct payment will be deducted from the amount of the State's allotment, and will be proportional to the Tribe's or organization's proportion of the State's adult AFDC recipient population, as established pursuant to § 250.93.

(2) The remaining allocation to a State IV-A agency shall be subject to the regulations governing FFP at § 250.73.

(c) The following rules apply to Puerto Rico, Guam, the Virgin Islands and American Samoa which are subject to the provisions of section 1108 of the Act:

(1) The limitations on payments contained in section 1108 do not apply to a State's annual limit of entitlement for the JOBS program as described in § 250.70(b).

(2) The availability of FFP for child care under Part 255 and the related appropriate FFP rates are described at § 255.4(b)(2) and § 255.4(g).

(3) The availability of FFP for transitional child care under Part 256 and the related appropriate FFP rates are described at § 256.4(b).

§ 250.72 Maintenance of effort.

(a) Federal JOBS funds shall not be used to supplant non-Federal funds for services and activities that promote the purposes of the JOBS program.

(b) States must spend no less than the total of State and local expenditures incurred in fiscal year 1986 for training, employment and education programs which had a defined purpose of preventing welfare dependency or potential welfare dependency. This requirement includes State and local funds expended for title IV-A and title IV-C work programs, including expenditures on those programs which were unmatched, and other State and local funds expended for this purpose, with or without benefit of Federal matching funds. This requirement also applies to expenditures for supportive services, including child care, expended for this purpose. In determining that State and local fiscal year expenditures are no less than fiscal year 1986 expenditures, States may use total aggregate expenditures.

(c) State IV-A agency contracts and arrangements may be made for services only to the extent that they are not otherwise available on a non-reimbursable basis. "Not otherwise available" here means that if the services are available to AFDC applicants and recipients by a provider, the provider must maintain that level of service before the State IV-A agency may contract for additional services of the same sort from that provider.

(d) Any State IV-A agency arrangement or contract must contain a certification from the provider that the services being contracted for are not otherwise available from that provider on a non-reimbursable basis. Services provided on a "non-reimbursable basis" are those services that a State makes available to most eligible residents or to the low income population, including AFDC applicants and recipients.

(e) A State IV-A agency directly providing JOBS component services must certify in the State JOBS plan that such services are not otherwise available on a non-reimbursable basis.

§ 250.73 Matching rates.

(a) From a State IV-A agency's total annual limit of entitlement, FFP is available at a rate of 90 percent for expenditures up to an amount equal to the State's WIN or WIN Demonstration allotment for fiscal year 1987. The State's match for this amount may be in cash or in kind fairly evaluated.

(b)(1) FFP will be available for the balance of a State IV-A agency's limit of entitlement as follows:

(i) At the higher of the State's Medicaid matching rate or 60 percent for: personnel costs (salaries and benefits) for full-time staff working full-time in any capacity in the JOBS program; and all direct costs associated with providing JOBS program services to individuals, including assessment, development of the employability plan, case management, and JOBS component activities.

(ii) At 50 percent for: indirect personnel costs which are excluded from JOBS matching at the FMAP rate (or 60%); non-personal services costs associated with these indirect personnel costs, including space, travel, utilities, equipment, and supplies; the costs of such items as JOBS program planning, monitoring, letting contracts, systems, title IV-F fair hearing activities, and other indirect costs of providing JOBS services and activities; and for transportation, work-related expenses, and work-related supportive services as provided under the requirements of Part 255.

(2) A State's match for these amounts must be in cash, not in kind.

(c) The costs of services and activities purchased under contract by the State or local IV-A agency must be segregated according to the requirements of the FMAP rate with a floor of 60 percent and the requirements for 50 percent matching.

(d) A State's share of JOBS expenditures may include public and private funds.

(1) Public funds may be considered as the State's share in claiming FFP when the funds are:

(i) Appropriated directly to the State or local agency, or transferred from another public agency (including Indian tribes) to the State or local agency and under its administrative control;

(ii) Not used to match other Federal funds; and

(iii) Not Federal funds, or are Federal funds authorized by Federal law to be used to match other Federal funds.

(2) Funds donated from private sources may be considered as the State's share in claiming FFP when the funds are:

(i) Transferred to the State or local agency and under its administrative control;

(ii) Donated without any restriction which would require their use for assisting a particular individual or at particular facilities or institutions;

(iii) Do not revert to the donor's facility or use.

(e) If included in a State's JOBS and Supportive Services plans, FFP is available for JOBS activities and services provided for certain periods to an individual who has been a JOBS participant but who loses eligibility for AFDC. These activities and periods are:

(1) Case management activities and supportive services for up to 90 days from the date the individual loses eligibility for AFDC; and

(2) JOBS component activities for the duration of the activity if funds for the activity are obligated or expended before the individual loses eligibility for AFDC.

§ 250.74 Reduced matching rate.

(a)(1) FFP for a State IV-A agency shall be 50 percent (rather than the rates described in § 250.73) in any fiscal year in which that State spends less than 55 percent of the State's JOBS expenditures on applicants and recipients who are members of the State's target populations as defined in § 250.1.

(2) If any State IV-A agency demonstrates to the satisfaction of the Secretary that the characteristics of the caseload in that State make it infeasible to meet the requirements of paragraph (a)(1), and that the State is targeting an approved set of long-term or potential long-term recipients, the match rate in § 250.73 shall be applied.

(3) A State IV-A agency need not require or allow participation of an individual in the program if, as a result of such participation, the amount payable to the State for quarters in a fiscal year with respect to the program would be reduced pursuant to paragraph (a)(1).

(b)(1) FFP for a State IV-A agency shall be 50 percent (rather than the rates described in § 250.73) in any fiscal year for the State's JOBS expenditures if the State's participation rate (determined under paragraph (b)(2)) for the preceding fiscal year does not equal or exceed:

(i) 7 percent if the preceding fiscal year is 1990;

(ii) 7 percent if such year is 1991, however, no reduction in FFP shall be made in 1991 for any failure to meet the participation rate specified in (b)(1)(i);

(iii) 11 percent if such year is 1992;

(iv) 11 percent if such year is 1993;

(v) 15 percent if such year is 1994; and

(vi) 20 percent if such year is 1995.

(2) The State IV-A agency's participation rate for a fiscal year shall be the average of its participation rates for computation periods in such fiscal year. The computation periods shall be:

(i) The fiscal year, in the case of fiscal year 1990;

(ii) The first six months, and the seventh through twelfth months, in the case of fiscal year 1991;

(iii) The first three months, the fourth through sixth months, the seventh through ninth months, and the tenth through twelfth months, in the case of fiscal years 1992 and 1993; and

(iv) Each month, in the case of fiscal years 1994 and 1995.

(3) The State IV-A agency's participation rate for a computation period shall be the number, expressed as a percentage, equal to:

(i) The average monthly number of individuals required or allowed by the State to participate in the program, who have participated (as defined in § 250.78) in such program in months in the computation period, plus the number of individuals required or allowed by the State to participate in such program, who have so participated in that month in such period for which the number of such participants is the greatest; divided by

(ii) Twice the average monthly number of individuals required to participate in such period (other than individuals described in paragraphs (b)(9)(i) and (b)(9)(iv) of § 250.30 with respect to whom the State IV–A agency has exercised its option to require their participation and individuals sanctioned under § 250.34).

(4) In determining the average monthly number of individuals required to participate as provided in paragraph (b)(3)(ii), the following individuals shall be excluded:

(i) Those who are determined exempt in accordance with exemption criterion in § 250.30(b);

(ii) Those who on a case-by-case basis have been determined to have good cause for not participating;

(iii) Those who reside in an area of the State in which the JOBS program is not operated; and

(iv) Those who have been sanctioned.

(5) If the Secretary determines that the State IV–A agency has failed to achieve the participation rate for any fiscal year, if the Secretary may waive, in whole or in part, the reduction in the payment rate otherwise required by paragraph (b)(1) if he finds that:

(i) The State is in conformity with section 402(a)(19) and part F of the Act;

(ii) The State has made a good faith effort to achieve the applicable participation rate for such fiscal year; and

(iii) The State has submitted a proposal which is likely to achieve the applicable participation rate for the current fiscal year and the subsequent fiscal years (if any) specified therein.

(c)(1) FFP for a State IV–A agency shall be 50 percent beginning in fiscal year 1995 for the State's JOBS expenditures (rather than the rates described in § 250.73) if the percentage of UP cases meeting the participation requirements in § 250.33, for the preceding fiscal year does not equal or exceed:

(i) 40 percent in the case of the average of each month in fiscal year 1994;

(ii) 50 percent in the case of the average of each month in fiscal year 1995;

(iii) 60 percent in the case of the average of each month in fiscal year 1996; and

(iv) 75 percent in the case of the average of each month in each of the fiscal years 1997 and 1998.

(2) The percentage of participants for any month in a fiscal year for this purpose shall equal the average of:

(i) The number of individuals described in § 250.33 who have met the requirement therein; divided by

(ii) The total number of principal earners (but excluding those in families who have been recipients of aid for 2 months or less if, during the period that the family received aid, at least one parent engaged in intensive job search as defined in § 250.1).

(3) If the Secretary determines that the State IV–A agency has failed to achieve the participation rate for any fiscal year specified above, the Secretary may waive, in whole or in part, the reduction in the payment rate otherwise required by paragraph (c)(1) if he finds that:

(i) The State is in conformity with section 402(a)(19) and Part F of the Act;

(ii) The State has made a good faith effort to achieve the applicable participation rate and has been unable to do so because of economic conditions in the State, including significant numbers of recipients living in remote locations or isolated rural areas where the availability of work sites is severely limited, or because of rapid and substantial increases in the caseload that cannot reasonably be planned for; and

(iii) The State has submitted a proposal which is likely to achieve the applicable participation rate for the current fiscal year and the subsequent fiscal years (if any) specified therein.

§ 250.75 Activities excluded from FFP.

(a) The costs of education or training activities (such as tuition, books, fees, room and board) that the State IV-A agency determines may constitute participation under the provisions of § 250.48(a) shall not constitute federally reimbursable expenses for purposes of the JOBS program.

(b) No funds shall be used for construction.

(c) No funds shall be used to assist, promote, or deter union organizing.

§ 250.76 Financial reports, records, statements and audits.

(a) The following Departmental regulations are applicable to the JOBS program: Part 92, "Uniform administrative requirements for grants and cooperative agreements to State and local governments;" Part 16, "Procedures of the Departmental Appeals Board;" Part 30, "Claims collection;" Part 75, "Informal grant appeals procedures;" Part 95, "General administration-grant programs;" and Part 201, "Grants to States for public assistance programs."

(b) Financial reporting of JOBS program expenditures are generally subject to the requirements of the existing regulations at § 201.5 and § 92.41, as appropriate.

(c) Financial records and accounts shall be made available for audit purposes to the Secretary or any authorized representative.

(d) JOBS program funds and activities shall be audited in conformity with the requirements of §§ 92.26 and 74.62(a).

(e) FFP improperly claimed under the JOBS program is subject to disallowance. If a State IV-A agency disagrees with a decision to disallow FFP, it can appeal within 30 days of the date of the disallowance decision. The procedures for appeal of AFDC disallowances apply, including review of the Departmental Appeals Board, in accordance with part 16 of the Department's regulations.

§ 250.77 Costs matchable as AFDC payments.

(a) Costs incurred by the State IV-A agency for supplemental AFDC payments shall be treated as title IV-A costs with respect to which sections 403(a)(1) or 403(a)(2) of the Act apply, when such payments are made in order that a recipient's family shall not experience a net loss of cash income from the recipient having been required by the State to accept a job.

(b) Payments to employers under work supplementation as described at § 250.62(l) shall be expenditures incurred by the State IV-A agency for AFDC.

(c) States may claim as AFDC administrative expenditures those costs related to JOBS orientation, determination of mandatory status, and referral to the JOBS program when such activities are conducted by a title IV-A eligibility or income maintenance worker. When these same activities are conducted by JOBS staff, these costs must be claimed under title IV-F.

§ 250.78 Definition of participation for enhanced FFP.

(a) For the purpose of determining a State's participation rate under § 250.74(b), the average monthly number of individuals who have participated will be the largest number of applicants and recipients whose combined and averaged weekly hours of participation in the activities specified in paragraph (b)(1) equals or exceeds 20 hours per week.

(b) For the purpose of paragraph (a),

(1) Activities include:

(i) Assessment and employability plan development, but only for one month for each such individual for each period on AFDC;

(ii) Any component specified in the State JOBS plan, with the exception of job development and job placement;

(iii) Any approved self-initiated education or training pursuant to § 250.48(a);

(iv) Job entry, in the following manner. For the month in which the job entry occurs, an individual will be considered to be participating for the number of hours of work. Hours of work will then be included with hours of component activity in the month of the job entry in determining the average weekly activity level for the individual. Hours of work in the following month will be counted, provided the individual retains employment throughout the month. However, job entries will only be considered for:

(A) Individuals who were participating in a JOBS component or activity during the month of the job entry, or the preceding calendar month, or;

(B) Individuals who received job development and placement services during the month of job entry, or the preceding calendar month.

(2) The number of hours counted for an individual will not include time spent commuting to or from the assignment or to or from a child care provider;

(3) Individuals, other than those in high school, will not be considered to be participating in an educational activity during the period between school years. An individual enrolled and in attendance in high school during the last semester of the school year will be considered to be participating at her average weekly attendance level for the previous school year during the period between school years if she is expected to return to high school for the next school year. Individuals in all educational activities will be considered to be participating for the assigned hours during shorter, scheduled school breaks;

(4) An individual will be considered to have satisfactorily participated if she attended an activity for at least 75 percent of the monthly hours scheduled. All hours of scheduled activity will be counted if the individual has satisfactorily participated. Neither hours of scheduled activity nor hours of participation will be counted if an individual has not satisfactorily participated.

Subpart I—Uniform Data Collection Requirements

§ 250.80 Uniform data collection requirements.

(a) A State IV-A agency must provide to the Department a sample of monthly unaggregated case record data containing such data and identifiers as are specified in § 250.82, and such additional data as the Secretary may from time to time specify in an Action Transmittal or in reporting instructions.

(1) The sample must be provided in formats specified by the Department. Data must be submitted electronically on an on-going basis by means of disk, tape or electronic connection, with all cases submitted no later than 45 days after the end of the month in which the sample is drawn.

(2) Each record of the sample must contain an identifier that is not the Social Security number, and that protects the privacy of the individual pursuant to the requirements of § 205.50.

(3) The sample must be large enough to provide a precision of plus or minus two percentage points for an 0.2 attribute (p=20% or 0.2) at a 95 percent confidence level. Submission of 100 percent of unaggregated JOBS case records is also acceptable.

(4) The sample shall be drawn from the population of individuals scheduled to participate in a component, actively engaged in assessment or employability planning in the month, or who had a job entry in the sample month or the month previous to the sample month.

(5) For each record in the sample, the State must verify that the individual satisfactorily participated in the sample month, as defined in § 250.78, except that for individuals who entered employment, the State must verify only that the individual was employed at the end of the sample month.

(b) For the purpose of determining participation rates, a State IV-A agency must report, for each month, on a quarterly basis, the aggregate number of individuals required to participate as specified in § 250.74(b)(3)(ii).

(c)(1) For the purpose of calculating whether a State spent 55 percent of its title IV-F funds on target groups pursuant to § 250.74(a), and determining the amounts spent per family by component and activity, each year a State IV-A agency may, instead of a cost tracking system that identifies all funds spent on each individual, develop and submit to the Secretary a table of the previous Federal fiscal year average total JOBS cost per participant per month of participation.

(2) The average total cost data in the table must separately state:

(i) For pre-component activity: assessment and related testing, employability development planning, and associated administrative and case management costs;

(ii) For each component: component costs, and associated administrative and case management costs;

(d) A State IV-A agency must submit any other information that the Secretary determines necessary.

(e) Until October 1, 1991, or until sample based reporting is implemented, whichever is later, the State must submit such interim aggregate hardcopy reports as are required by the Secretary.

§ 250.81 State data systems options.

(a) A State IV-A agency may integrate its JOBS Automated System (JAS) with an existing or planned title IV-A system. A State IV-A agency may also use a stand-alone system. Either option must be a client-based information system capable of producing at a minimum all data elements required in § 250.82.

(b)(1) Title IV-A funding is available for planning, design, development and implementation of the JOBS interface between title IV-A and title IV-F requirements. The interface of an automated JOBS program with the title IV-A system, for verification of eligibility and reconciliation of data, includes planning, design, development and implementation of title IV-A systems to:

(i) Manage information on eligibility factors and target group membership;

(ii) Effect notifications and referrals including non-cooperation;

(iii) Check records of applicants and recipients on a periodic basis with other agencies to verify continued eligibility; and

(iv) Notify appropriate officials when a recipient ceases to be eligible.

(2) If the JAS interfaces with an existing or planned FAMIS-type system and all FAMIS requirements are met, title IV-A FFP at 90 percent is available. Otherwise interface expenditures are matched at 50 percent under title IV-A.

(c) JOBS funding is available at a 50 percent administrative rate for the acquisition and development of the remainder of the JAS, subject to the requirements of § 205.35 through § 205.38. This excludes the JOBS interface with the title IV-A system, but includes all other input, maintenance and reporting of those data elements required in § 250.82 that cannot be obtained from the title IV-A system through the JOBS interface. A cost allocation plan must be approved to share the cost among all Federal and State programs benefiting from the State's JAS.

(d) Administrative funding under either title IV-A or title IV-F for systems design, development, and implementation must comply with the requirements of § 95.601, *et seq.*

§ 250.82 Required case record data.

(a) The State IV-A agency must maintain an individual case record for each JOBS participant.

(1) For the purposes of this section, a JOBS participant is an individual who is:

(i) Actively engaged in assessment or employability planning during the month; or

(ii) Assigned to a component, including self-initiated education or training pursuant to § 250.48(a).

(2) To the extent the State IV-A agency's JAS can access the required data in the required form from other systems, duplicate entry is to be avoided.

(b) The minimum data required are:

(1) Case identifier other than Social Security Number, but the State must maintain in its files a link between the identifier and the SSN;

(2) Date of birth;

(3) Program status and exemption code;

(4) Youngest child's date of birth;

(5) Date of most recent AFDC opening;

(6) Number of months within the most recent 60 months of receipt of AFDC;

(7) Education level (highest grade completed) and date completed;

(8) Literacy level, but only when the State elects to determine a literacy level;

(9) Target group codes to identify which of the target groups specified in § 250.1 an individual was a member of, if any, at the time of entry into JOBS, and the date of entry;

(10) Identifier for a person not exempt, because the State elected to reduce the age of youngest child exemption to less than age three, or because the State elected to require participation of the second parent in a UP case where the second parent would otherwise be exempt for meeting the requirements of § 250.30(b)(9);

(11) Assignment status: scheduled hours, and beginning and ending dates, for each of the following that apply:

(i) Assessment and employability development planning;

(ii) Each JOBS component, including separate identification for self-initiated education or training, pursuant to § 250.48(a);

(iii) Job status, including date of job entry;

(12) Identifier indicating that the individual satisfactorily participated in the JOBS program, as defined at § 250.78, during the month, but only for sampled cases described in § 250.80;

(13) Amount of supportive services, other than child care, paid during the month;

(14) Amount of child care payment for the month;

(15) Type of child care;

(16) Such additional data as the Secretary may from time to time specify in an Action Transmittal or in reporting instructions.

Subpart J—Operation of JOBS Programs by Indian Tribes and Alaska Native Organizations

§ 250.90 Scope and purpose.

The purpose of an Indian Tribe or Alaska Native organization JOBS program is to assure that Tribal (refers to both an Indian Tribe and Alaska Native organization) members receiving AFDC obtain the education, training and employment services they need to avoid long-term dependency. Tribal grantees are subject to all the regulations under part 250, unless otherwise indicated in this subpart, and regulations under parts 255, 74, and 92, which include general funding and disallowance and termination provisions for Federal programs.

§ 250.91 Eligible Indian Tribe and Alaska Native organization grantees.

Funds shall be allotted to operate a JOBS program pursuant to § 250.71 to groups meeting the following eligibility standards:

(a) An Indian Tribe, defined as any Tribe, band, nation, or other organized group or community of Indians which:

(1) Is federally recognized as eligible for the special programs and services provided by the United States Government to Indians because of their status as Indians; and

(2) Has a reservation, which means Indian reservation, public domain Indian allotment, or former Indian reservation in Oklahoma.

(b) A consortium or Tribal organization representing more than one Tribe if each participating member Tribe meets the eligibility requirements for JOBS as defined in paragraph (a) of this section and if such consortium or organization meets the following criteria:

(1) All the participating members must be in geographic proximity to one another. However, a consortium may operate in more than one State;

(2) The consortium must demonstrate that it has the managerial, technical or administrative staff with the ability to properly administer government funds, manage a JOBS program and comply with the provisions of the Statute and of the regulations;

(3) The consortium must submit with its JOBS application a resolution from each participating Tribe authorizing the consortium to receive JOBS funds on behalf of each Tribe in its JOBS program.

(c) An Alaska Native organization including any Alaska Native village, or regional or village corporation eligible to operate a Federal program under Public Law 93-638 (Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450) or such group's designee. The boundaries of an Alas

Native organization are those of the geographical region, established pursuant to section 7(a) of the Alaska Native Claims Settlement Act, (85 Stat. 688) within which the Alaska Native organization is located.

§ 250.92 Selection criteria for eligible Alaska Native organizations.

(a) The Secretary may approve only one application from an Alaska Native organization for each of the 12 geographical regions established pursuant to section 7(a) of the Alaska Native Claims Settlement Act. The Department shall designate the Alaska Native grantee for each geographic region based on the following criteria:

(1) Previous experience in operating an effective employment and training program serving Indians and Native Alaskans;

(2) The number and kinds of activities of similar magnitude and complexity that the applicant has successfully completed; and

(3) The ability to provide services effectively to all eligible Native Alaskans residing in the region.

(b) In order to be approved an Alaska Native application must promote the efficient and nonduplicative administration of the JOBS program in the State of Alaska.

§ 250.93 Funding formula.

(a) A Tribal grantee's share of program funds will be calculated annually pursuant to § 250.71 and will be based on the following ratio:

(1) The number of adult members of the Indian Tribe receiving AFDC who live in the designated service area compared to the total number of adult AFDC recipients in the State. The designated service area must include the reservation but can not extend to areas or communities which are not designated by the Commissioner of Indian Affairs as "near reservation" as defined at 25 CFR 20.1(r). Tribal grantees may exclude a portion of the reservation which is remote from that part of the reservation where JOBS services are provided; or

(2) The number of adult Alaska Natives receiving AFDC who reside within the boundaries of the region which the organization represents to the total number of adult AFDC recipients in the State of Alaska.

(3) Tribal member means a person who is enrolled in, or certified as meeting the membership requirements by the designated official of, that Indian Tribe or Alaska Native organization.

(b)(1) The State IV-A agency and the Indian Tribe or Alaska Native organization must exchange available information on adult Tribal AFDC recipients needed to determine the eligible Tribal population and to define the designated service area, if other than the reservation or trust lands. State and Tribal representatives receiving such AFDC recipient data must follow standards of confidentiality to assure that recipient and Tribal privacy is protected pursuant to § 205.50.

(2) If sufficient data on adult AFDC recipient members of a Tribe or of an Alaska Native organization are not available, the State IV-A agency and the Tribe or organization may enter into an agreement covering a mutually agreed upon estimated figure of the eligible Tribal population or covering the designated service area.

(3) If the State IV-A agency and the Tribe or organization cannot agree on the number of Tribal adult AFDC recipients or designated service area, the Secretary, in consultation with the Tribe or organization and State, will make the final determination of Tribal funding.

(c) A Tribal grantee is not required to match Federal funds.

(d) States with Tribal JOBS programs in operation or a pending application may require applicants and recipients living in the designated service area to provide Tribal membership status as a condition of eligibility for AFDC under the following conditions:

(1) The information is necessary either to determine the number of adult members of an Indian Tribe or Alaska Native organization who receive AFDC, or to help determine whether such individual is to be served by a State or Tribal JOBS program;

(2) Upon requesting information about Tribal status, the State must explain the reason for its request for the information (e.g., to determine which JOBS program will serve the individ-

ual), and refer the individual to the appropriate Tribal JOBS program for further information;

(3) Such information is only requested in those areas in which there is a Tribal JOBS program or an application pending and where a State JOBS program is also in operation; and

(4) Information requested must relate only to membership in those Tribes or Alaska Native organizations operating or expected to operate a JOBS program in the area.

§ 250.94 Program administration, implementation and operations.

(a) The Tribal grantee must designate a Tribal agency or department to administer the Tribal JOBS program.

(1) The designated agency or department will be responsible for the administration of the Tribal JOBS program including the requirements under 402(a)(19) and Part F of the Act.

(2) The responsibility for the administration of JOBS, pursuant to paragraph (a)(1) of this section, includes functional areas such as exemption and priority determinations (§ 250.30), orientation and referrals (§ 250.40), assessment and the development of the employability plan (§ 250.41), JOBS activities (§ 250.44 and § 250.94(e)), dispute resolution and hearings (§ 250.36). Certain other related functions are retained by the State IV-A agency. These include the administration of provisions on child care (Part 255) and transitional child care services (Part 256).

(3) The designated agency or department may not delegate or contract out any functions which involve agency discretion, except as provided for in § 250.10 of the regulations.

(b) The Tribe or organization that submitted an application by April 13, 1989, may begin operating its JOBS program as of the first day of any quarter between July 1, 1989 and October 1, 1990, independent of the State's JOBS implementation date. If the Tribe or organization elects to begin operating its program before the State, during this interim time period:

(1) The Tribe or organization must guarantee necessary child care (without additional title IV-A funding for child care pursuant to Part 255) if it requires an individual to participate in its JOBS program.

(2) If the Tribe or organization cannot guarantee necessary child care as described in paragraph (b)(1), it cannot require an individual to participate in its JOBS program but may operate an entirely voluntary program.

(c) The Tribe or organization may not begin its JOBS program prior to approval of the Secretary. Final documentation for the application (meaning supplemental materials submitted after the initial April 13, 1989 application) must be sent to the Department at least 45 days prior to implementation of the Tribai program. This will allow sufficient time for the Department's review and approval.

(d)(1) Tribes or organizations shall not be subject to the specific requirements of § 250.12 of the regulations but must coordinate program services with appropriate agencies as follows:

(i) The Tribal application with final documentation must be submitted to the State IV-A agency for its review and comment at least 30 days before submittal to the Secretary. The Tribe or organization shall consider comments made by the State IV-A agency in its application submitted to the Secretary.

(ii) The application with final documentation must also be made available to Tribal members for review and comment at least 30 days prior to submittal to the Secretary. The Tribe or organization must certify in its application that such public participation has taken place.

(2) To operate a JOBS program, the Tribe or organization must coordinate with the State IV-A agency to ensure that interrelated program functions are effectively performed. These functions include State responsibilities—such as providing to the Tribal grantee eligibility notifications and the necessary child care funds or services fo Tribal participation—and Tribal r sponsibilities—such as notifying th State IV-A agency when Tribal members fail to participate without goo cause.

(3) A Tribe or organization mu consult and coordinate with other pr viders including those specified

paragraph (d)(4) of this section, to identify existing resources, prevent duplication of services, and ensure that the maximum level of services is available to enable participants to achieve self-sufficiency.

(4) At a minimum, the Tribal grantee must consult and coordinate with:

(i) The Tribal agency responsible for JTPA, if applicable;

(ii) The Tribal agency responsible for other employment and training services, including those offered under the Bureau of Indian Affairs;

(iii) The Tribal agency responsible for education, including any programs under the Bureau of Indian Affairs, the Department of Interior, or under the Office of Indian Education of the Department of Education.

(5) The Tribal grantee must consult with existing formal advisory councils, such as private industry councils, on the development of arrangements and contracts under JOBS, as described in § 250.12(d).

(6) The Tribal grantee must consult with private industry councils and Tribal Employment Rights Offices, as appropriate, to identify, and obtain advice on, the types of jobs available or likely to become available within a reasonable commuting distance from the Tribe's designated service area or the organization's boundaries. The Tribe or organization must ensure that JOBS provides training for the types of jobs which are, or are likely to become, available in or near its designated service area or organization's boundaries and that resources are not expended on training for jobs that are not likely to become available.

(e) Tribal programs are subject to the requirements of § 250.44 but are not subject to the requirements of § 250.45.

(1) A Tribal JOBS program must include all the mandatory components at § 250.44 unless the Tribe or organization can justify that such activities are inappropriate. A Tribe's or organization's application must describe the types of activities and methods of delivery for each of the mandatory components.

(2) Tribal programs are not subject to the provisions at § 250.45 but must include at least one of the following components unless a Tribe or organization can justify that such activities are inappropriate:

(i) Group and individual job search, as described in § 250.60;

(ii) On-the-job training, as described in § 250.61;

(iii) Community work experience program, as described in § 250.63, or a work experience program as approved by the Secretary;

(iv) Work supplementation program, as described in § 250.62;

(v) Alternative education, training and employment activities which are not described in § 250.60, § 250.61, § 250.62 or § 250.63, as approved by the Secretary.

(A) Innovative approaches with the private sector are encouraged if they are consistent with the purpose of JOBS to assist AFDC recipients to avoid long-term dependency.

(B) JOBS funds may not be used for public service employment or for allowances other than for those required for supportive services as described in Part 255.

(3) Because the amount of the IV-A payment is an integral part of determining participation in work supplementation and community work experience programs, a Tribe or organization may operate these programs only if adequate agreements with the State IV-A agency are implemented. The agreements should cover operational procedures and the exchange of information, including grant levels and child support calculations for community work experience participants and earnings for work supplementation participants.

§ 250.95 Supportive services.

(a) The Tribal grantee must provide, pay for, or reimburse necessary supportive services (other than child care) pursuant to Part 255, including transportation and other work-related expenses, that the Tribe or organization determines are necessary to enable an individual to participate in JOBS.

(b) The State IV-A agency is responsible for guaranteeing child care for Tribal JOBS participants according to the provisions specified under Part 255.

(c) If the Tribe or organization is using child care funds or services provided by the State pursuant to paragraph (b) of this section, it must ensure, based on a method which is mutually acceptable to the State IV-A agency and Tribal grantee, that necessary child care is available when requiring an individual to participate in its program.

(d) If the Tribe or organization does not choose to use State funds or services for child care, it must provide (without additional title IV-A funding for child care) these funds or services in order to guarantee necessary child care when requiring an individual to participate.

(e) Once the State has implemented its JOBS program, the Tribe or organization, in order to require an individual to participate, must guarantee necessary child care either through the State IV-A agency, pursuant to paragraphs (b) and (c), or directly, pursuant to paragraph (d) of this section; but it may not operate an entirely voluntary JOBS program.

§ 250.96 Waiver authority.

The Secretary may waive any JOBS requirements set forth under section 402(a)(19) and Part F of the Act that he determines inappropriate for Tribal JOBS programs.

(a) The Secretary has determined that certain requirements of the Act are inappropriate for JOBS programs operated by Indian Tribes or Alaska Native organizations. They cover the following provisions or sections of the regulations:

(1) Section 250.10 (IV-A agency administration);

(2) Section 250.11 (Statewide requirement);

(3) Section 250.12 (Coordination and consultation);

(4) Section 250.20 (State plan requirements);

(5) Section 250.21 (State plan content);

(6) Section 250.33 (UP-16 hour rule);

(7) Section 250.45 (Optional components);

(8) Section 250.70 (a) and (b) (Allocation entitlement);

(9) Section 250.71 (b)(2) and (c) (Allotment);

(10) Section 250.72 (Maintenance of effort);-

(11) Section 250.73 (Matching rates);

(12) Section 250.74 (Reduced matching rate);

(13) Section 250.78 (Definition of Participation for Enhanced FFP);

(14) Section 250.80 (Uniform Data Collection Requirements);

(15) Section 250.81 (State data systems);

(16) Section 250.82 (Required case record data);

(17) Section 255.1 (c) and (h) (Supportive Services plan requirements).

(b) A Tribe or organization may request that the Secretary waive any other requirements of section 402(a)(19) or Part F of the Act not listed under paragraph (a) of this section with proper justification. The Secretary will consider the appropriateness of such waivers on a case-by-case basis.

§ 250.97 Application requirements and documentation.

(a) As a condition of participation in the JOBS program, the designated Tribal agency or department responsible for administering the JOBS program must:

(1) No later than October 1, 1990, establish and operate a JOBS program under a JOBS application that has been approved by the Secretary before implementation and meets the requirements of parts 250 and 255.

(2) Submit final documentation for the application to the Secretary for review and action at least 45 days prior to the anticipated implementation date. The Tribal grantee may not begin its JOBS program prior to the Secretary's approval pursuant to § 250.94(c).

(b) The Tribal application must be submitted to the State IV-A agency for review and comment at least 30 days prior to submittal to the Secretary. The application shall be made available to Tribal members for review and comment at least 30 days prior to submittal to the Secretary. Comments received shall be resolved by the Tribe or organization.

(c)(1) The Tribal grantee must submit an update of its JOBS application to the Secretary for approval at least every two years. The update shall be considered a new JOBS application and shall be submitted to the Secretary for approval at least 90 days prior to the beginning of the next biennial period. The Tribal grantee must follow the public review and comment provisions in paragraph (b).

(2) The update must consist of:

(i) Assurances regarding those parts of the Tribal JOBS application that remain unchanged;

(ii) A description of any changes in program operations including but not limited to changes in component activities; and

(iii) An estimate of the number of persons to be served by the program during the next biennium.

(3)(i) For all Tribal grantees the first biennial update must be submitted by July 1, 1992, for the period beginning October 1, 1992.

(ii) Each approved biennial update shall remain in force until formal action is taken (i.e. approval or disapproval) by the Secretary on the update for the following biennial period.

(d) The Tribal grantee shall submit proposed amendments to the approved application as necessary, and they shall be reviewed according to the process described at §§ 201.3(f) and 201.3(g).

(e) A Tribe or organization that submits an application, an amendment to an existing application, or a biennial update to its application that is not approvable will be given the opportunity to make revisions before formal disapproval; upon formal disapproval, a Tribe or organization may request a hearing pursuant to the process set forth in § 201.4 and Part 213.

(f) A Tribal applicant must submit documentation (which is in addition to the information requested in the application) covering the following items for the Secretary's review before final approval of the application can be determined:

(1) Assurances that the administering Tribal agency will have in effect a JOBS program which meets the requirements of section 402(a)(19) and Part F of the Act, unless waived by the Secretary, and including cross-references to all appropriate statutory and regulatory requirements that the JOBS program will meet;

(2) A description of the administrative process and methods of delivery for:

(i) Providing program information under § 250.40;

(ii) Assessments pursuant to § 250.41;

(iii) Agency-participant agreements, if this option is elected;

(iv) Case management system (§ 250.43), if this option is elected;

(3) A description of the mandatory and elected optional component activities described under § 250.94(e) and the methods of delivery;

(4) A description of the selection and assignment criteria that will be used to refer participants to the various services and activities provided under the Tribal JOBS program;

(5) A description of the coordination processes with other programs, including any agreements with the State IV-A agency, Tribal JTPA agency, other employment and training agencies and educational agencies, specifying how these other agencies will track and report to the Tribe or organization on satisfactory participation and use of JOBS funds;

(6) A description of how the administering Tribal agency will determine eligibility for work-related expenses such as clothing or transportation and other supportive services; a listing of the work-related expenses and the supportive services it will provide to its JOBS participants; the methods of delivering these supportive services; and

(7) A description of the conciliation and hearings procedures which meet the due process standards specified in proposed § 250.36, including notification to the State IV-A agency of formal decisions that a non-exempt Tribal member has failed to participate.

§ 250.98 Maintenance of effort for Indian Tribes and Alaska Native organizations.

Tribal programs are not subject to the requirements in § 250.72 but are subject to the following requirements:

(a) JOBS funds shall be used only for education, training and employment activities that are in addition to those which would otherwise be available to Tribal AFDC recipients in the absence of such funds.

(b) A Tribe or organization may contract for services only to the extent that such services are not otherwise available to AFDC Tribal recipients on a non-reimbursable basis.

PART 255—CHILD CARE AND OTHER WORK-RELATED SUPPORTIVE SERVICES DURING PARTICIPATION IN EMPLOYMENT, EDUCATION, AND TRAINING

Sec.

255.0 Purpose.
255.1 State plan requirements.
255.2 Eligibility.
255.3 Methods of providing child care and other supportive services.
255.4 Allowable costs and matching rates.
255.5 Child care standards.
255.6 Uniform reporting requirements for child care.

AUTHORITY: Secs. 402, 403 and 1102 of the Social Security Act as amended (42 U.S.C. 602, 603 and 1302).

SOURCE: 54 FR 42263, Oct. 13, 1989, unless otherwise noted.

§ 255.0 Purpose.

This Part pertains to child care and other supportive services for families receiving, and in some cases applying for, AFDC. State IV-A agencies must provide such services, under conditions specified in this Part, to eligible families to allow participation in employment, education or training.

§ 255.1 State plan requirements.

A State IV-A agency operating a program under title IV-A must submit a Supportive Services plan to the Secretary, consistent with the schedule specified at § 250.20, which includes the following:

(a) The methods the State IV-A agency will use to provide child care in accordance with § 255.3.

(b) The dollar amount(s) which the State IV-A agency establishes for limiting the amount of payment or reimbursement for child care, if the State IV-A agency elects pursuant to § 255.4(a)(1), to set an amount (or amounts) higher than the amount of the disregard at § 233.20(a)(11)(i).

(c) A description of the types of other supportive services and work-related expenses, including transportation, which will be available to participants in the JOBS program under Part 250 and other eligible recipients, the methods by which they will be provided, the monetary limits to be applied to each type of service or activity, and the basis for determining need for each type.

(d)(1) A description of the criteria which will be used to approve education or training for child care and supportive services in non-JOBS areas of the State, in accordance with § 255.2. Such criteria must, at a minimum, include:

(i) That the education or training is consistent with an appropriate employment goal; and

(ii) That the individual is making satisfactory progress.

(2) Specification of any procedures under which IV-A staff will approve in non-JOBS areas:

(i) Education or training activities for child care and supportive services; and

(ii) One-time work-related expenses which are necessary for an applicant or recipient to accept or maintain employment.

(e) An assurance that procedures are established to ensure that:

(1) Child care meets applicable standards of State and local law, and/or Tribal law, where applicable;

(2) Any entity providing child care allows parental access as required under § 255.4(c)(1);

(3) In arranging child care, the State IV-A agency takes the individual needs of the child into account, in accordance with § 255.3(b); and

(4) Child care provided or claimed for reimbursement is reasonably related to the hours of participation or employment.

(f) An assessment of the availability of child care services provided on a non-reimbursable basis by Federal, State and local sources other than title IV-A.

(g) Specification of a State IV-A agency's policies on:

(1) Interim child care and other supportive services as provided in § 255.2(d); and

(2) Transitional supportive services, as provided in § 250.73(e)(1).

(h) Specification of a State IV-A agency's policy on provision of one-time work-related expenses in accordance with § 255.2(c)(3), including:

(1) The types of any such expense;

(2) The monetary limits to be applied to such expenses; and

(3) Whether the State provides one-time work-related expenses in non-JOBS areas.

(i) A description of the methodology used for setting local market rates pursuant to § 255.4(a)(2). Such methodology must address rates established for each type of care (i.e., center, group family day care, family day care, and in-home care) provided. The plan must address variations in the costs of care for infants, toddlers, preschool and school-age children, special needs children, whether care is full or part-time, and reduction in the cost of care for additional children in the same family if such variations exist. The rates must be submitted to the Family Support Administration Regional Office and must be updated periodically, but no less than biennially.

(j) A description of the nature of the State IV-A agency's efforts to coordinate child care and other supportive services, with the groups specified at § 255.3(h).

(k) In States where Tribal entities are directly funded to operate a JOBS program, a description of how the State will provide child care services for JOBS participants served by those Tribal entities.

(l)(1) A description of the State's procedures for ensuring that center-based care will be subject to State and local requirements designed to ensure basic health and safety, including fire safety, protections; or

(2) A plan for developing such procedures.

§ 255.2 Eligibility.

(a) The State IV-A agency must guarantee child care for a dependent child who is: under age 13; physically or mentally incapable of caring for himself or herself, as verified by the State based upon a determination by a physician or a licensed or certified psychologist; or under court supervision (and for a child who would be a dependent child except for the receipt of benefits under Supplemental Security Income under title XVI or foster care under title IV-E), to the extent that such child care is necessary to permit an AFDC eligible family member to—

(1) Accept employment or remain employed; or

(2) Participate in an approved education or training activity under JOBS (including self-initiated education or training pursuant to § 250.48(a)), or in approved education or training consistent with criteria in the State's Supportive Services plan for approval of education or training in non-JOBS areas.

(b) The guarantee under paragraph (a) also applies to Tribal members who are subject to participation requirements under Subpart J of Part 250, consistent with the requirement in paragraph (f).

(c)(1) The State IV-A agency must provide, pay for, or reimburse transportation and other work-related expenses (including work-related supportive services) which it determines are necessary to enable an individual to participate in approved JOBS activities under Part 250, including self-initiated education or training pursuant to § 250.48(a)).

(2)(i) The State agency may provide, pay for, or reimburse transportation and other work-related expenses (including work-related supportive services) which it determines are necessary to enable a recipient to participate in approved education or training in non-JOBS areas;

(ii) Approval of education and training for necessary supportive services in non-JOBS areas must be consistent with criteria established in the Supportive Services plan.

(3)(i) The State agency may provide, pay for, or reimburse one-time, work-related expenses which it determines are necessary for an applicant or recipient to accept or maintain employment.

(ii) The State IV-A agency may approve these expenses through the

JOBS program or, in non-JOBS areas, through procedures established in accordance with § 255.1(d)(2).

(d) The State IV-A agency may provide for child care and other necessary supportive services for an individual who is waiting to enter an approved education, training, or JOBS component or employment:

(1) For a period not to exceed two weeks; or

(2) For a period not to exceed one month where child care (or other services) arrangements would otherwise be lost and the subsequent activity is scheduled to begin within that period.

(e) The State IV-A agency must provide child care and supportive services necessary:

(1) For applicants to participate in job search pursuant to § 250.60; and

(2) For applicants and recipients to participate in other approved activities to prepare them for participation in the JOBS program.

(f) The State IV-A agency must make child care services available to applicants and recipients who are participating in a JOBS program operated by an Indian Tribe or Alaska Native organization, pursuant to §§ 250.94 and 250.95. Child care services, which are also appropriate in meeting any special needs of Tribal participants, must be made available on an equitable basis. To the extent it is appropriate, the same range of reimbursement methods must be available to Tribal JOBS participants as are available to participants in the State JOBS program.

(g)(1) The State IV-A agency must inform families requesting child care under this Part of their rights and responsibilities.

(2) The State IV-A agency must respond to a request for child care under this Part within a reasonable period of time.

(h) AFDC applicants and recipients are entitled to hearings under the provisions of §§ 205.10 or 250.36, as appropriate, on issues concerning the appropriateness of, denial of, prompt issuance of, or intended actions to discontinue, terminate, suspend or reduce assistance under this part. However:

(1) Changes in the manner of payment are not subject to timely notice requirements unless they result in a discontinuation, suspension, reduction, or termination of benefits, or they force a change in child care arrangements; and

(2) The provisions of § 205.10(a)(6) regarding aid paid pending a hearing do not apply.

§ 255.3 Methods of providing child care and other supportive services.

(a) The State IV-A agency may use any of the following methods for guaranteeing the availability of child care:

(1) Providing the care directly;

(2) Arranging the care through providers by use of purchase of service contracts or vouchers;

(3) Providing cash or vouchers in advance to the caretaker relative in the family;

(4) Reimbursing the caretaker relative in the family;

(5) Arranging with other agencies and community volunteer groups for non-reimbursed care;

(6) Using the child care disregard as provided in § 233.20(a)(11)(i); or

(7) Adopting such other arrangements as the State IV-A agency deems appropriate.

(b) In arranging for child care, the State IV-A agency must take into account the individual needs of the child, including the reasonable accessibility of the care to the child's home and school, or caretaker's place of employment or training (based on normally accepted standards in the community or State), and the appropriateness of the care to the age and special needs of the child.

(c) If more than one type of child care is available, e.g., center, group family care, family day care or in-home care, the caretaker relative must be provided an opportunity to choose the arrangement. The State IV-A agency may select the method of payment under paragraph (a).

(d)(1) An individual required to participate under Part 250 may refuse available appropriate child care as determined by the State IV-A agency, if she can arrange other child care or can show that such refusal will not prevent or interfere with participation in approved education or training activities (including JOBS) or employment.

(2) The State IV-A agency must establish at least one method by which self-arranged child care can be paid.

(e)(1) If a State IV-A agency chooses to meet the cost of child care through a method other than use of the child care disregard at § 233.20(a)(11)(i), the State IV-A agency must then determine AFDC eligibility and payment amount without this disregard, except for families described in paragraph (e)(2) of this section.

(2) In the case of a family which was receiving AFDC on October 13, 1988, based on application of the child care disregard at § 233.20(a)(11)(i) or through the provision of special needs, if such a family would be disadvantaged as a result of meeting the cost of child care through another method which does directly affect AFDC eligibility, the State must determine the family's AFDC eligibility and payment (including child care needs), as if the method of provision which was applicable on October 13, 1988, is still in effect.

(f)(1) For cases subject to retrospective budgeting, the State IV-A agency has the option to meet the cost of child care directly for the first one or two months of employment and then to apply the child care disregard at § 233.20(a)(11)(i) to offset income received in those initial one or two months in determining the AFDC payment for the corresponding payment months. The State IV-A agency's payment shall not be counted as income or resources for any month. Under these circumstances, a State IV-A agency may not apply the disregard to income used to determine the amount of the payment for the month(s) following the month in which child care ceases.

(2) The State IV-A agency, at its option, may provide a supplemental payment to a family when the amount available through the disregard is less than the amount that would be available if another method were used.

(g) The State IV-A agency may assure the availability of necessary transportation and other work-related expenses (including other work-related supportive services) through direct provision, or payment, or reimbursement of costs consistent with its Supportive Services plan.

(h) Each State IV-A agency must coordinate:

(1) Its child care activities with existing child care resource and referral agencies and with early childhood education programs in the State, including Head Start programs, preschool programs funded under Chapter 1 of the Education Consolidation and Improvement Act of 1981, and school and nonprofit child care programs (including community-based organizations receiving funds designated for preschool programs for handicapped children); and

(2) Its supportive services with related services provided by other agencies.

§ 255.4 Allowable costs and matching rates.

(a) FFP is available for the actual cost of child care up to a statewide limit established by the State IV-A agency in its State Supportive Services plan, but not for more than the applicable local market rate.

(1) In setting the statewide limit:

(i) The State IV-A agency may choose the amount of the child care disregard at § 233.20(a)(11)(i), or some higher amount(s); and

(ii) The State agency may specify a higher statewide limit for children with special needs.

(2) The applicable local market rates must be determined:

(i) Based on representative samples of child care providers or slots;

(ii) For all political subdivisions or for alternative areas which represent reasonable local child care markets based upon their geographic proximity or common characteristics; and

(iii) Based on the 75th percentile cost of such types of care in the local areas. (However, where there are only one or two providers of a type of care in a local market area, the rate may be set at the 100th percentile.)

(3) Local market rates must:

(i) Be established for center care, group family care, family day care, and in-home care;

(ii) Differentiate among care for children with special needs, infants, toddlers, pre-school and school-age children, where applicable;

(iii) Differentiate between full-time and part-time care, if applicable; and

(iv) Consider reductions in the cost of care for additional children in the same family.

(b)(1) Except for Puerto Rico, Guam, the Virgin Islands, and American Samoa, in the case of amounts expended for child care, FFP shall be at the Federal medical assistance program (Medicaid) rate and is included in the title IV-A general program entitlement.

(2) For Puerto Rico, Guam, the Virgin Islands, and American Samoa, the rate is 75 percent and is included in the JOBS limit of entitlement.

(c) FFP is available only if:

(1) The entity providing the care allows parental access; and

(2) The care meets applicable standards of State and local law, and/or Tribal law, where applicable.

(d) In the case of amounts expended for transportation and other work-related expenses and supportive services for eligible individuals, FFP shall be at the rate of 50 percent and is subject to the annual limit of entitlement, pursuant to § 250.73(b)(1).

(e) The State IV-A agency is not permitted to provide payment for child care or any other supportive service or work-related expense as an AFDC special need pursuant to § 233.20(a)(2)(v)(B)(2).

(f) FFP is not available for:

(1) Recruitment or training of child care providers, resource development, or licensing activities; or

(2) Payments made for care provided by parents, legal guardians, or members of the assistance unit (including essential persons).

(g) The matching rate for child care administrative costs under this Part is 50 percent and, except for Puerto Rico, Guam, the Virgin Islands, and American Samoa, the amount is outside the funding limitation for JOBS.

(h) The State IV-A agency must take reasonable precautions to guard against fraud and abuse in the funding of child care costs, consistent with requirements at § 235.110.

(i)(1) Federal matching funds improperly claimed for child care services or administration are subject to disallowance under Part 201. If the State IV-A agency disagrees with the decision to disallow FFP, it can appeal under existing title IV-A procedures, including review of the Departmental Appeals Board in accordance with Part 16 of these regulations.

(2) Financial reporting of child care expenditures is generally subject to the requirements of the existing regulations at § 201.5.

(3) Child care expenditures are generally subject to the requirements of Part 201, including the provisions at § 201.5(e) (regarding the applicability of most of the requirements of Part 74 to the administration of grants to States), the provisions at Subpart B (regarding review and audits), and the provisions of § 201.67 (regarding treatment of uncashed or cancelled checks).

(j)(1) The State must take all reasonable steps necessary to promptly correct any overpayment to a recipient or a service provider under this section (or Part 256). An overpayment to a family or provider currently receiving child care payments or benefits must be recovered through repayment (in part or in full) by the family or provider responsible for the overpayment or by recovering the overpayment through a reduction in the amount payable to the family or provider.

(2) State IV-A agencies need not attempt recovery of overpayments from providers if obligated to make the full payment under contract; however, FFP may not be claimed for such overpayments.

(3) In recovering overpayments from a recipient family, the State shall provide that the family retains, for any month, a reasonable amount of funds.

(4) Recoupment of child care overpayments may be made only from child care benefits; and recoupment of supportive services overpayments may be made only from supportive services benefits. Any recoveries of child care or supportive services overpayments may be made from AFDC benefit payments only upon a voluntary request of the recipient family.

(5) Overpayments to individuals may be recovered from the family unit which was overpaid, from individuals

who were members of the family when overpaid, or from families which include members of a previously overpaid family. In cases of former recipients or recipients who refuse to repay, recovery shall be made by appropriate action under State law against the income and resources of the overpaid individual or family.

(6) Underpayments and overpayments may be offset against each other in correcting incorrect payments.

(7) Recovery must be attempted in all cases of fraud, in all cases involving current recipients, and in all cases where the overpayment amount would equal or exceed the costs of recovery.

(8) States must collect and maintain information on the collection of overpayments and make appropriate adjustments for Federal matching, consistent with requirements established by the Secretary.

§ 255.5 Child care standards.

(a) The State IV-A agency must establish procedures to ensure that center-based child care will be subject to State and local (and/or Tribal, where applicable) requirements designed to ensure basic health and safety (including fire safety) protections.

(b) The State must also endeavor to develop guidelines for family day care if it has not already done so.

(c) Upon request of the Secretary, the State IV-A agency must make available information on applicable standards of State and local law, including the requirements specified in paragraph (a) of this section and the guidelines specified in paragraph (b) of this section.

§ 255.6 Uniform reporting requirements for child care.

Each State IV-A agency shall be required to provide such child care information and data as are determined to be necessary by the Secretary to ensure the effective implementation of the provisions under this Part and Part 250. The uniform reporting requirements include, at a minimum, the average monthly number of families served, the types of such families, the amounts expended with respect to families assisted, the types of paid child care arrangements, and the length of time for which such families are assisted. The information and data for these families shall be separately stated with respect to families who have earnings and those who do not, and with respect to families who are receiving aid under the State IV-A plan and those who are not.

PART 256—TRANSITIONAL CHILD CARE

Sec.
256.0 Purpose.
256.1 State plan requirements.
256.2 Eligibility.
256.3 Fee requirement.
256.4 Other provisions.

AUTHORITY: Secs. 402, 403 and 1102 of the Social Security Act as amended (42 U.S.C. 602, 603 and 1302).

SOURCE: 54 FR 42267, Oct. 13, 1989, unless otherwise noted.

§ 256.0 Purpose.

This part pertains to child care available to families whose eligibility for AFDC assistance has ceased due to increased hours of, or earnings from, employment or as a result of the loss of income disregards due to the expiration of the time limits at § 233.20(a)(11).

§ 256.1 State plan requirements.

(a) The State Supportive Services plan specified under § 255.1 must include a description of:

(1) The methods the State IV-A agency will use to provide transitional child care;

(2) The sliding fee scale under which families will contribute toward the cost of child care;

(3) The methods and procedures the State IV-A agency shall use to ensure that fees are collected; and

(4) The application requirements established by the State.

(b) A State IV-A agency which has not implemented a JOBS program as of April 1, 1990 must submit a Supportive Services plan for transitional care which includes the provisions described in this Part and the provisions at § 255.1 which apply to transitional child care (i.e., paragraphs (a), (b), (e), (f), (i), (k) and (l)).

§ 256.2 Eligibility.

(a) The State IV-A agency must guarantee child care for a child who is: under age 13; is physically or mentally incapable of caring for himself or herself, as verified by the State based on a determination of a physician or a licensed or certified psychologist; or under court supervision, and who would be a dependent child, if needy, (and for a child who would be a dependent child except for the receipt of benefits under Supplemental Security Income under title XVI or foster care under title IV-E), to the extent that such care is necessary to permit a member of an AFDC family to accept or retain employment.

(b) A family is eligible for transitional child care provided the following conditions are met:

(1) The family must have ceased to be eligible for AFDC as a result of increased hours of, or increased income from, employment or the loss of income disregards due to the time limitations at § 233.20(a)(11);

(2) The family must have received AFDC in at least three of the six months immediately preceding the first month of ineligibility;

(3) The family requests transitional child care benefits, provides the information necessary for determining eligibility and fees, and meets appropriate application requirements established by the State; and

(4) The family ceased to be eligible for AFDC on or after April 1, 1990.

(c) Notwithstanding when the family requests assistance under this Part, eligibility for transitional child care begins with the first month for which the family is ineligible for AFDC, for the reasons included in paragraph (b)(1), and continues for a period of 12 consecutive months. Families may begin to receive child care in any month during the 12-month eligibility period.

(d) The family is not eligible for child care under this Part for any remaining portion of the 12-month period if the caretaker relative:

(1) Terminates employment without good cause, as defined in § 250.35; or

(2) Fails to cooperate with the State IV-A agency in establishing payments and enforcing child support obligations, as defined in § 232.12.

(e)(1) If the caretaker relative loses a job with good cause, and then finds another job, the family can qualify for the remaining portion of the 12-month eligibility period.

(2) If the family re-establishes eligibility for AFDC during this period, it could qualify for a new 12-month eligibility period if it met the necessary conditions of eligibility (including the 3-of-6 month requirement).

§ 256.3 Fee requirement.

(a) The State IV-A agency must require each family receiving transitional child care to contribute toward the payment for such care based on the family's ability to pay.

(b) Each State IV-A agency shall establish a sliding fee scale which will provide for some level of contribution by all recipients.

(c) A State IV-A agency may vary the period of collection for different fee levels.

(d) The State IV-A agency may establish whether fees are paid to the providers or the State agency. In cases where the family's contribution is paid to the State IV-A agency, such contribution is subject to the program income requirements in § 74.42(c), Subpart F. Claims for Federal matching funds for child care expenditures shall be adjusted to reflect collection of fees under this Part.

(e) Individuals who fail to cooperate in paying required fees will, subject to appropriate notice and hearings requirements, lose eligibility for benefits under this Part for so long as back fees are owed, unless satisfactory arrangements are made to make full payment.

§ 256.4 Other provisions.

(a) The State IV-A agency, in providing transitional child care, must meet the requirements in §§ 255.3(a) paragraphs (1)-(5) and (7), (b), (c), (d), and (h); 255.5; and 255.6.

(b) The provisions on child care costs and matching rates at § 255.4 shall apply to this Part, except in the case of Puerto Rico, Guam, the Virgin Islands, and American Samoa, child care expenditures under this Part are not covered as JOBS expenditures, but as expenditures subject to the limitation under section 1108 of the Act.

(c) The State IV-A agency must notify all families of their potential eligibility for transitional child care services under this part in writing, and orally as appropriate, at the time they become ineligible for AFDC. The notification must include information on the steps they must take to establish eligibility for benefits and of their rights and responsibilities under the program.

(d) Provision of benefits under this part are subject to the notice and hearings provisions at § 205.10, except that timely notice requirements do not apply to changes in the manner of payment, unless those changes result in a discontinuation, suspension, reduction, or termination of benefits, or they force a change in child care arrangements.

PART 282—DEMONSTRATION PROJECTS

Subpart A—General Policy Provisions for Section 1115(b) Projects

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AUTHORITY: Sec. 1102, 49 Stat. 647 (42 U.S.C. 1302); sec. 1115, 91 Stat. 1562 (42 U.S.C. 1315), Social Security Act, as amended.

SOURCE: 43 FR 53730, Nov. 17, 1978, unless otherwise noted.

Subpart A—General Policy Provisions for Section 1115(b) Projects

§ 282.10 Purpose of section 1115(b).

The purpose of section 1115(b) is to permit the States to achieve more efficient, effective use of public assistance funds; to reduce the dependency of public assistance recipients; and to improve the living conditions and increase the incomes of public assistance recipients. The purpose is to be achieved through a State's conducting not more than three demonstration projects, providing opportunities for public service employment, training, employment incentives, or other related activities. Participation by AFDC recipients must be voluntary.

§ 282.11 States eligible to apply.

Any State that has an approved plan under part A, title IV (AFDC), is eligible to apply for projects under section 1115(b).

§ 282.12 No preclusion of other projects.

Demonstration projects under section 1115(b) are authorized independently. Their use in a State does not preclude or limit other projects or activities approved under section 1115(a) or other provisions of the Act.

§ 282.13 Statewide project.

(a) *Limit of one statewide project.* Under section 1115(b), a State can have only three demonstration projects, only one of which may be a statewide project. A "statewide project" is one in effect in all political subdivisions of a State.

(b) *Section 402(a)(1) waiver.* If a State implements a section 1115(b) project statewide, no other 1115(b) project in the State can be statewide. A State may waive the requirements of section 402(a)(1) of the Act (relating to statewide operation) with respect to all three of its section 1115(b) projects, for the duration of the projects.

§ 282.14 Section 402(a)(19) waiver—WIN.

(a) *State waives WIN requirements.* A State may waive any or all of the requirements of section 402(a)(19) of the Act (relating to the work incentive program (WIN)) with respect to demonstration projects. Where section 402(a)(19) is waived, use WIN of funds in connection with a demonstration project under section 115(b) is prohibited.

(b) *State does not waive WIN requirements.* If a State does not waive section 402(a)(19), any person in active status under the WIN program is precluded from volunteering for or participating in a demonstration project under section 1115(b), unless the State AFDC agency has an agreement with the WIN agency defining the criteria under which persons in active WIN status may also participate as volunteers in 1115(b) projects. A person in active WIN status is a participant in a WIN component or is currently being considered for assignment to a WIN component.

§ 282.15 Section 402(a)(3) waiver—single State agency administration.

A State may waive the requirements of section 402(a)(3) of the Act (relating to administration by a single State agency) with respect to demonstration projects under section 1115(b).

§ 282.16 Section 402(a)(8) waiver—disregard of earned income.

(a) A State may waive the requirements of section 402(a)(8) of the Act (relating to disregard of earned income) with respect to individuals actively participating in demonstration projects under section 1115(b). However, no waiver of section 402(a)(8) shall permit a disregard of over one-half of the earned income of a project participant.

(b) Unless the State has waived the section 402(a)(8) earned income disregard under the authority of section 1115(b), it shall be applied to all of the compensation received by an individual for participating in a project, including the benefits payable on behalf of other members of the family as a result of the volunteer's participation (benefits to the family are also regarded as compensation to the project volunteer).

§ 282.17 Duration of demonstration projects.

(a) *Two-year limit.* A State may not conduct any demonstration project established under section 1115(b) for longer than 2 years, or beyond September 30, 1980, whichever comes first. Evaluation of the project may continue after its ending date.

(b) *Beginning date.* A demonstration project under section 1115(b) shall begin not earlier than either (1) the date of approval by the Secretary, or (2) the 60th day after the application is submitted to the Secretary, if the Secretary has not denied the application.

§ 282.18 Participation must be voluntary.

Participation in a demonstration project under section 1115(b) by any individual receiving AFDC benefits must be voluntary.

§ 282.19 Duration of volunteer's participation.

A volunteer's participation in a demonstration project under section 1115(b) may last for the life of the project (see § 282.17). A State's plan may provide for shorter periods of participation so that more volunteers may be given opportunities to participate.

§ 282.20 If volunteer withdraws from project.

A volunteer may withdraw from a project at any time. If the person does, eligibility for assistance remains protected. The State shall make adjustments so that the AFDC grant to the family will be paid as assistance rather than as compensation for participation in a project, starting with the date of withdrawal from the project.

Subpart B—Policy Provisions for Public Service Employment in Section 1115(b) Projects

§ 282.25 Acceptable types of public service employment.

(a) *Public service employment generally.* Demonstration projects under section 1115(b) may provide for public service employment. The following requirements apply:

(1) The job provided must meet public service needs not met or not adequately met prior to the start of the project;

(2) The job provided must be likely to lead to regular, unsubsidized employment, or to opportunities for continued job training; and

(3) The project must, to the extent feasible, provide jobs in an occupational field likely to expand within the public or private sector as the rate of unemployment drops.

(b) *Who may be a public service employer.* Demonstration projects under section 1115(b) may provide employment by both public and private, nonprofit agencies or organizations. The following requirements apply with respect to private, nonprofit agencies or organizations:

(1) The private, nonprofit agency or organization must be one that provides the public with educational, health, or social services;

(2) The agency's or organization's services must be offered to the general public, and must not be primarily or exclusively for the benefit of members constituents; and

(3) The agency's or organization's services must be the best available to meet the needs of the unemployed AFDC population.

§ 282.26 Assignment of participants.

Job or training assignments shall, to the extent possible, be within reasonable commuting distance for participants.

§ 282.27 Employed worker displacement prohibited.

In public service employment under a demonstration project, placement of participants must not result in displacement of employed workers.

§ 282.28 Health, safety, other conditions.

In public service employment under a demonstration project, the State must establish and maintain appropriate standards for health, safety, and other conditions relating to work and training. No participant in any project may be trained or employed under conditions which are unsanitary or hazardous to his health or safety. If the training or employment involves an inherently dangerous occupation (e.g., fire control, law enforcement), reasonable safety practices must be observed. In any public service employment project, the conditions of work, training, education, and employment must be reasonable, taking into consideration the type of work in which participants are involved, the geographic region and the standards applied to similar jobs in that region, and the level of skill of the participant. Requirements of the Service Contract Act of 1965 (Pub. L. 89-286), sections 208(a)(5) and 703(5), regarding health and safety conditions, represent the Federal standard that must be met.

§ 282.29 Workmen's compensation protection.

In public service employment under a demonstration project, the State must see that there is appropriate workmen's compensation protection for all participants. The protection must be equivalent to that provided for regular employees doing the same or similar work in the same locality.

Workmen's compensation protection would primarily cover work-related injuries. Coverage may be provided through the State's compensation agency or by a private insurance carrier.

§ 282.30 No resultant "unemployment."

A participant's employment in a demonstration project under section 1115(b) is not considered employment for purposes of any finding with respect to "unemployment" as that term is used in section 407 (Dependent Children of Unemployed Parents).

[43 FR 53730, Nov. 17, 1978, as amended at 53 FR 36580, Sept. 21, 1988]

Subpart C—Administrative Provisions for Section 1115(b) Projects

§ 282.35 Administrative requirements.

The provisions of 45 CFR Part 74, Administration of Grants, which establish uniform administrative requirements and cost principles, apply to demonstration projects under section 1115(b), with the following exceptions:

(a) The provisions of Subpart G, Matching and Cost Sharing, do not apply; and

(b) The provisions of Subpart I, Financial Reporting Requirements, do not apply.

§ 282.36 Application.

(a) *Application kit available.* Application must be made in the format prescribed by the Commissioner of Social Security. An application kit containing all the necessary forms and instructions is available from, and completed applications must be sent to: Division of Contracting and Procurement, Social Security Administration, Box 7696, Gwynn Oak Branch, Baltimore, Md. 21207.

(b) *Incomplete applications.* A completed application is a written proposal for a demonstration project, signed by an authorized State official, and substantially in the format prescribed by the Commissioner. Only completed applications will be considered by the Secretary. The 60-day time period during which the Secretary may deny an application will not start until a completed application has been submitted.

§ 282.37 Public notice by State.

(a) *Publication and comments.* When a State submits an application to the Secretary for a section 1115(b) project, at the same time the State shall issue public notice that it has made application. The public notice must include a general description of the proposed demonstration project. The State shall invite comment from interested parties, which may be submitted to the State or to the Secretary within the 30-day period starting with the date the application is submitted to the Secretary.

(b) *Public inspection of application.* The State shall make copies of the application available for public inspection.

§ 282.38 Public notice by the Secretary.

(a) *Publication and comments.* The Secretary shall immediately upon receipt of an application publish a summary of the proposed demonstration project in the FEDERAL REGISTER. The Secretary will consider comments received from the public regarding the application.

(b) *Public inspection of applications.* The Secretary will make copies of the application available for public inspection at the Department of Health and Human Services. They may be inspected at this address: Family Assistance Studies Staff, Office of Research and Statistics, Social Security Administration, Room 914, 1875 Connecticut Avenue NW., Washington, DC 20009.

§ 282.39 Approval; denial.

(a) *Approval by the Secretary.* A State can proceed with a demonstration project under section 1115(b) when the State's application has been approved by the Secretary. The Secretary may not approve an application earlier than 30 days following the date the application is submitted to him (Note that this coincides with the 30-day public comment period; see § 282.37.)

(b) *Denial by the Secretary.* A State can proceed with a demonstration project under section 1115(b) 60 days after the date on which the application is submitted to the Secretary, unless, during that 60-day period, the Secretary denies the application.

§ 282.40 Waiver cancellation; project termination.

The Secretary may review any waiver made by a State at any time during the life of the project. If the Secretary finds that any waiver made by a State is inconsistent with the purposes of section 1115(b) and the purposes of the AFDC program, the Secretary may disapprove the waiver. If the Secretary disapproves a waiver, and specifies that the project shall be terminated, the State must terminate the project no later than the last day of the month following the month in which the Secretary disapproved the State's waiver.

§ 282.41 Evaluation of demonstration projects.

Each project must include an evaluation component. Instructions for conducting an objective evaluation of a demonstration project are included in the application kit, and minimum Federal requirements for evaluation are set forth in the kit. An evaluation plan may go beyond the uniform Federal minimum requirements.

§ 282.42 Section 1115(b) project reports.

The State shall submit reports as prescribed by the Commissioner, for all project funds, including the non-Federal share.

Subpart D—Compensation and Funding Provisions for Section 1115(b) Projects

§ 282.46 Compensation of project volunteers.

(a) *Compensation defined.* AFDC assistance benefits paid to a family because of work performed in a public service assignment by one of its members shall be considered compensation for work performed. Additional amounts paid to the family by the State for work performed in a public service assignment shall also be regarded as compensation for work performed.

(b) *Level of compensation.* Each participant in a public service employment project must be compensated for work at an hourly rate equal to the prevailing entry level hourly wage for similar work in the same locality.

(c) *State use of other funds for compensation.* A State may include use of supplementary funds as part of its project plan.

(1) A State may use funds appropriated under the State and Local Fiscal Assistance Act (SLFAA) of 1972 for any fiscal year in which the project is conducted, to cover costs of salaries of participants in public service employment not covered by AFDC funds. A State may use other State or Federal funds, in the absence of any statutory or regulatory prohibition, to augment AFDC and SLFAA funds used for demonstration projects.

(2) Supplementary funds may be used to bring participant's salaries above the AFDC benefit level; to compensate participants for work-related expenses, including reasonable child care expenses; and for other purposes consistent with section 1115(b).

§ 282.47 Limitation on Federal matching in compensation to families.

Federal matching in amounts paid to a family which includes a member participating in a project may not be increased over the Federal matching which would be payable if the family were receiving AFDC and one of its members were not working in a project. States may supplement AFDC assistance above the family's grant level where a family member participates in service employment (e.g., to provide compensation under § 282.46 or for work related expenses) by using other Federal or State funds, including funds under the State and Local Fiscal Assistance Act; however, these supplementary amounts will not be eligible for matching under title IV-A of the Social Security Act.

EXAMPLE: Assume that a family with no other income receives a $300 monthly AFDC grant before one of the family member participates in a project. The Federal matching in this assistance payment is $150. As a result of a member's participation in a public service employment project conducted under section 1115(b) of the Act, the family's AFDC grant of $300 per month is now regarded as compensation, i.e., wages. Federal matching in this payment is still $150. Since this payment is regarded as compensation for work performed, the family is entitled to have the earned income disregard ($30 plus ⅓ of the remainder, assuming it is not waived as described in § 282.16) and work expenses (e.g., $70.00) deducted from this amount in determining countable income. When the $120 earned income disregard and work expenses of $70 are deducted, countable income is $110. Under the State's methodology for determining the amount of the AFDC grant, the family would be entitled to an additional assistance payment of $190 above the $300 received in compensation for participating in the project.

Nevertheless, because of the statutory limitation in section 1115(b)(4), no additional Federal matching is available in this $190 assistance payment since $150 in Federal matching is all that would have been available if the family were not participating in the project, and this amount will be paid to the State as partial reimbursement for the $300 paid to the family as compensation.

§ 282.48 Federal reimbursement to State for administrative expenses.

A State may be reimbursed for administrative costs of a demonstration project under section 1115(b), under the rules and at the rates that generally apply to administrative costs. Federal matching for administrative costs is not limited to the amounts payable to the State in absence of a section 1115(b) project.

PARTS 283—299 [RESERVED]

CHAPTER III—OFFICE OF CHILD SUPPORT ENFORCEMENT (CHILD SUPPORT ENFORCEMENT PROGRAM), FAMILY SUPPORT ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES

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PART 300—[RESERVED]

PART 301—STATE PLAN APPROVAL AND GRANT PROCEDURES

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AUTHORITY: 42 U.S.C. 651 through 658, 660, 664, 666, 667, and 1302.

SOURCE: 40 FR 27157, June 26, 1975, unless otherwise noted.

§ 301.0 Scope and applicability of this part.

This part deals with the administration of title IV-D of the Social Security Act by the Federal Government including actions on the State plan and amendments thereto and review of such actions; grants under the approved plan; review and audit of State and local expenditures; and reconsideration of disallowances of expenditures for Federal financial participation.

§ 301.1 General definitions.

When used in this chapter, unless the context otherwise indicates:

"Act" means the Social Security Act, and the title referred to is title IV-D of that Act.

"Applicable matching rate" means the rate of Federal funding of State IV-D programs' administrative costs for the appropriate fiscal year as follows:

FY 1983 through FY 1987, 70 percent
FY 1988 and FY 1989, 68 percent
FY 1990 and thereafter, 66 percent

"Central registry" means a single unit or office within the State IV-D agency which receives, disseminates and has oversight responsibility for processing incoming interstate IV-D cases, including URESA petitions and requests for wage withholding in IV-D cases and, at the option of the State, intrastate IV-D cases.

"Department" means the Department of Health and Human Services.

"Director" means the Director, Office of Child Support Enforcement, who is the Secretary's designee to administer the Child Support Enforcement program under title IV-D.

"Federal PLS" means the Parent Locator Service operated by the Office of Child Support Enforcement pursuant to section 452(a)(9) of the Act.

"IV-D Agency" means the single and separate organizational unit in the State that has the responsibility for administering or supervising the administration of the State plan under title IV-D of the Act.

"Medicaid" means medical assistance provided under a State plan approved under title XIX of the Act.

"Medicaid agency" means the single State agency that has the responsibility for the administration of, or supervising the administration of, the State plan under title XIX of the Act.

"Office" means the Office of Child Support Enforcement which is the separate organizational unit within the Department with the responsibility for the administration of the program under this title.

"Overdue support" means a delinquency pursuant to an obligation determined under a court order, or an order of an administrative process established under State law, for support and maintenance of a minor child, which is owed to or on behalf of the child, or for the absent parent's spouse (or former spouse) with whom the child is living, but only if a support obligation has been established with respect to the spouse and the support obligation established with respect to the child is being enforced under State's IV-D plan. At the option of the State, overdue support may include amounts which otherwise meet the definition in the previous sentence but which are owed to or on behalf of a child who is not a minor child. The option to include support owed to children who are not minors applies independently to the procedures required under § 302.70 of this chapter.

"Past-due support" means the amount of support determined under a court order or an order of an administrative process established under State law for support and maintenance of a child or of a child and the parent with whom the child is living, which has not been paid. For purposes of referral for Federal income tax refund offset of support due an individual who has applied for services under § 302.33 of this chapter, "past-due support" is limited to support owed to or on behalf of a minor child.

"Political subdivision" means a legal entity of the State as defined by the State, including a legal entity of the political subdivision so defined, such as a Prosecuting or District Attorney or a Friend of the Court.

"Regional Office" and "Central Office" refer to the Regional Offices and the Central Office of the Office of Child Support Enforcement, respectively.

"Secretary" means the Secretary of Health and Human Services.

"Spousal support" means a legally enforceable obligation assessed against an individual for the support of a spouse or former spouse who is living with a child or children for whom the individual also owes support.

"State" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam.

The "State plan" means the State plan for child and spousal support under section 454 of the Act.

"State PLS" means the service established by the IV-D agency pursuant to section 454(8) of the Act to locate absent parents.

[47 FR 57280, Dec. 23, 1982, as amended at 50 FR 19647, May 9, 1985; 50 FR 23958, June 7, 1985; 50 FR 31719, Aug. 6, 1985; 53 FR 5256, Feb. 22, 1988; 54 FR 32308, Aug. 4, 1989]

§ 301.10 State plan.

The State plan is a comprehensive statement submitted by the IV-D agency describing the nature and scope of its program and giving assurance that it will be administered in conformity with the specific requirements stipulated in title IV-D, the regulations in Subtitle A and this chapter of this title, and other applicable official issuances of the Department. The State plan contains all information necessary for the Office to determine whether the plan can be approved, as a basis for Federal financial participation in the State program.

§ 301.11 State plan; format.

The State plan must be submitted to the Office in the format and containing the information prescribed by the Office, and within time limits set in implementing instructions issued by the Office. Such time limits will be adequate for proper preparation of plans and submittal in accordance with the requirements for State Governors' review (see § 301.12 of this chapter).

(Approved by the Office of Management and Budget under control number 0960-0253)

[40 FR 27147, June 26, 1975, as amended at 51 FR 37730, Oct. 24, 1986]

§ 301.12 Submittal of State plan for Governor's review.

The State plan must be submitted to the State Governor for his review and comments, and the State plan must provide that the Governor will be given opportunity to review State plan amendments and long-range program planning projections or other periodic reports thereon. This requirement does not apply to periodic statistical or budget and other fiscal reports. Under this requirement, the Office of the Governor will be afforded a specified period in which to review the material. Any comments made will be transmitted to the Office with the documents.

(Approved by the Office of Management and Budget under control number 0960-0253)

[40 FR 27147, June 26, 1975, as amended at 51 FR 37730, Oct. 24, 1986]

§ 301.13 Approval of State plans and amendments.

The State plan consists of written documents furnished by the State to cover its Child Support Enforcement program under title IV-D of the Act. After approval of the original plan by the Office, all relevant changes, required by new statutes, rules, regulations, interpretations, and court decisions, are required to be submitted currently so that the Office may determine whether the plan continues to meet Federal requirements and policies.

(a) *Submittal.* State plans and revisions of the plans are submitted first to the State governor or his designee for review in accordance with § 301.12, and then to the regional office. The States are encouraged to obtain consultation of the regional staff when a plan is in process of preparation or revision.

(b) *Review.* The Office of Child Support Enforcement in the regional offices is responsible for review of State plans and amendments. It also initiates discussion with the IV-D agency on clarification of significant aspects of the plan which come to its attention in the course of this review. State plan material on which the regional staff has questions concerning the application of Federal policy is referred with recommendations as required to the Office of Child Support Enforcement in the central office for technical assistance. Comments and suggestions, including those of consultants in specified areas, may be prepared by the central office for use by the regional staff in negotiations with the IV-D agency.

(c) *Action.* The Regional Office exercises delegated authority to take affirmative action on the State plan and amendments thereto on the basis of policy statements or precedents previously approved by the Director. The Director retains authority for determining that proposed plan material is not approvable, or that a previously approved plan no longer meets the requirements for approval, except that a final determination of disapproval may not be made without prior consultation and discussion by the Director with the Secretary. The Regional Office or the Director formally notifies the IV-D agency of the actions taken on the State plan or revisions thereto.

(d) *Basis for approval.* Determinations as to whether the State plan (including plan amendments and administrative practice under the plan) originally meets or continues to meet the requirements for approval are based on relevant Federal statutes and regulations. Guidelines are furnished to assist in the interpretation of the regulations.

(e) *Prompt approval of the State plan.* The determination as to whether the State plan submitted for approval conforms to the requirements for approval under the Act and regulations issued pursuant thereto shall be made promptly and not later than the 90th day following the date on which the plan submittal is received in the regional office, unless the Regional Office has secured from the IV-D agency a written agreement to extend that period.

(f) *Prompt approval of plan amendments.* Any amendment of an approved State plan may, at the option of the State, be considered as a submission of a new State plan. If the State requests that such amendments be so considered, the determination as to its conformity with the requirements for approval shall be made promptly and not later than the 90th day following the date on which such a request is received in the Regional Office with respect to an amendment that has been received in such office, unless the Regional Commissioner has secured from the State agency a written agreement to extend that period.

(g) *Effective date.* The effective date of a new plan may not be earlier than the first day of the calendar quarter in which an approvable plan is submitted.

(Approved by the Office of Management and Budget under control number 0960-0253)

[40 FR 27147, June 26, 1975, as amended at 51 FR 37730, Oct. 24, 1986]

§ 301.14 Administrative review of certain administrative decisions.

Any State dissatisfied with a determination of the Director pursuant to § 301.13 (e) or (f) with respect to any plan or amendment may, within 60 days after the date of receipt of notification of such determination, file a petition with the Regional Office asking the Director for reconsideration of the issue of whether such plan or amendment conforms to the requirements for approval under the Act and pertinent Federal requirements. Within 30 days after receipt of such a petition, the Director shall notify the State of the time and place at which the hearing for the purpose of reconsidering such issue will be held. Such hearing shall be held not less than 30 days nor more than 60 days after the date notice of such hearing is furnished to the State, unless the Director and the State agree in writing on another time. The hearing procedures contained in 45 CFR Part 213 applicable to § 201.4 of this title shall apply to reconsiderations brought under this section. A determination affirming, modifying, or reversing the Director's original decision will be made within 60 days of the conclusion of the hearing. Action pursuant to an initial determination by the Director described in such § 301.1 (e) or (f) that a plan or amendment is not approvable shall not be stayed pending the reconsideration, but in the event that the Director subsequently determines that his original decision was incorrect he shall certify restitution forthwith in a lump sum of any funds incorrectly withheld or otherwise denied.

§ 301.15 Grants.

To States with approved plans, a grant is made each quarter for expenditures under the plan for the administration of the Child Support Enforcement program. The determination as to the amount of a grant to be made to a State is based upon documents submitted by the IV-D agency containing information required under the Act and such other pertinent facts as may be found necessary.

(a) *Form and manner of submittal*—

(1) *Time and place*. An estimate for a grant for each quarterly period must be forwarded to the Regional Office 45 days prior to the period of the estimate. It includes a certification of State funds and a justification statement in support of the estimate. A statement of quarterly expenditures and any necessary supporting schedules must be forwarded to the Department of Health and Human Services, Social and Rehabilitation Service, Attention: Finance Division, Washington, D.C. 20201, not later than 30 days after the end of the quarter.

(2) *Description of forms*. "State Agency Expenditure Projection—Quarterly Projection by Program" represents the IV-D agency's estimate of the total amount and the Federal share of expenditures for the administration of the title IV-D program for the quarter. From this estimate the State and Federal shares of the total expenditures are computed. The State's computed share of total estimated expenditures is the amount of State and local funds necessary for the quarter. The Federal share is the basis for the funds to be advanced for the quarter. The agency must also certify, on this form or otherwise, the amount of State funds (exclusive of any balance of advances received from the Federal Government) actually on hand and available for expenditure; this certification must be signed by the executive officer of the IV-D agency submitting the estimate or a person officially designated by him, or by a fiscal officer of the State if required by State law or regulation. (A form "Certificate of Availability of State Funds for Assistance and Administration during Quarter" is available for submitting this information, but its use is optional.) If the amount of State funds (or State and local funds if localities participate in the program), shown as available for expenditures is not sufficient to cover the State's proportionate share of the amount estimated to be expended, the certification must contain a statement showing the source from which the amount of the deficiency is expected to be derived and the time when this amount is expected to be made available.

(3) The IV-D agency must also submit a quarterly statement of expenditures for the title IV-D program. This is an accounting statement of the disposition of the Federal funds granted for past periods and provides the basis for making the adjustments necessary when the State's estimate for any prior quarter was greater or less than the amount the State actually expended in that quarter. The statement of expenditures also shows the share of the Federal Government in any recoupment, from whatever source, of expenditures claimed in any

prior period, and also in expenditures not properly subject to Federal financial participation which are acknowledged by the IV-D agency or have been revealed in the course of an audit.

(b) *Review.* The State's estimate is analyzed by the regional office and is forwarded with recommendations as required to the central office. The central office reviews the State's estimate, other relevant information, and any adjustments to be made for prior periods, and computes the grant.

(c) *Grant award.* The grant award computation form shows the amount of the estimate for the ensuing quarter, and the amounts by which the estimate is reduced or increased because of over- or under-estimate for the prior quarter and for other adjustments. This form is transmitted to the IV-D agency to draw the amount of the grant award as needed, to meet the Federal share of disbursements. The draw is through a commercial bank and the Federal Reserve system against a continuing letter of credit certified to the Secretary of the Treasury in favor of the State payee. A notice of the amount of the grant award is sent to the State Central Information Reception Agency in accord with section 201 of the Intergovernmental Cooperation Act of 1968.

(d) *Letter of credit payment system.* The letter of credit system for payment of advances of Federal funds was established pursuant to Treasury Department regulations. (Circular No. 1075), published in the FEDERAL REGISTER on July 11, 1967 (32 FR 10201). The HHS "Instructions to Recipient Organizations for Use of Letter of Credit" was transmitted to all grantees by memorandum from the Assistant Secretary-Comptroller on January 15, 1968.

(e) *General administrative requirements.* With the following exceptions, the provisions of Part 74 of this title, establishing uniform administrative requirements and cost principles, shall apply to all grants made to States under this part:

45 CFR PART 74

Subpart G	Matching and Cost Sharing.
Subpart I	Financial Reporting Requirements.

(Approved by the Office of Management and Budget under control numbers 0960-0239 and 0960-0235)

[40 FR 27147, June 26, 1975, as amended at 51 FR 37731, Oct. 24, 1986]

§ 301.16 Withholding of advance funds for not reporting.

(a) No advance for any quarter will be made unless full and complete reports on expenditures and collections, as required by §§ 301.15 and 302.15 of this chapter, respectively, have been submitted to the Office by the IV-D agency for all quarters with the exception of the two quarters immediately preceding the quarter for which the advance is to be made.

(b) For purposes of this section, a report is full and complete if:

(1) All line items of information are reported in accordance with OCSE instructions; and

(2) The report contains all applicable information available to the State and appropriate for inclusion in the report for the quarter being reported and prior quarters.

(Collection reporting form approved by the Office of Management and Budget under control number 0960-0238 and expenditure reporting form approved under control number 0960-0235)

[47 FR 8570, Mar. 1, 1982]

PART 302—STATE PLAN REQUIREMENTS

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AUTHORITY: 42 U.S.C. 651 through 658, 660, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396(k).

SOURCE: 40 FR 27159, June 26, 1975, unless otherwise noted.

§ 302.0 Scope of this part.

This part defines the State plan provisions required for an approved plan under title IV-D of the Act.

§ 302.1 Definitions.

The definitions found in § 301.1 of this chapter also are applicable to this part.

§ 302.10 Statewide operations.

The State plan shall provide that:

(a) It will be in operation on a statewide basis in accordance with equitable standards for administration that are mandatory throughout the State;

(b) If administered by a political subdivision of the State, the plan will be mandatory on such political subdivision;

(c) The IV-D agency will assure that the plan is continuously in operation in all appropriate offices or agencies through:

(1) Methods for informing staff of State policies, standards, procedures and instructions; and

(2) Regular planned examination and evaluation of operations in local offices by regularly assigned State staff, including regular visits by such staff; and through reports, controls, or other necessary methods.

§ 302.11 State financial participation.

The State plan shall provide that the State will participate financially in the program.

§ 302.12 Single and separate organizational unit.

(a) The State plan shall provide for the establishment or designation of a single and separate organizational unit to administer the IV-D plan. Such unit is referred to as the IV-D agency. Under this requirement:

(1) The IV-D agency may be:

(i) Located in the single State agency designated pursuant to § 205.100 to administer title IV-A of the Act;

(ii) Located in any other agency of the State; or,

(iii) Established as a new agency of the State.

(2) The IV-D agency shall be responsible and accountable for the operation of the IV-D program. Except as provided in § 303.20 of this part, the agency need not perform all the functions of the IV-D program so long as it insures that all these functions are being carried out properly, efficiently, and effectively;

(3) If the IV-D agency delegates any of the functions of the IV-D program to any other State or local agency or official, or any official with whom a cooperative agreement as described in § 302.34 has been entered into or purchases services from any person or private agency pursuant to § 304.22 of this part, the IV-D agency shall have responsibility for securing compliance with the requirements of the State plan by such agency or officials.

(b) The State plan shall describe the structure of the IV-D agency and the distribution of responsibilities among the major divisions within the unit, and if it is located within another agency, show its place in such agency. If any of the IV-D program functions are to be performed outside of the IV-D agency then these functions shall be listed with the name of the organization responsible for performing them.

(Approved by the Office of Management and Budget under control number 0960-0253)

[40 FR 27159, June 26, 1975, as amended at 51 FR 37731, Oct. 24, 1986]

§ 302.13 Plan amendments.

(a) The State plan shall provide that the plan will be amended whenever necessary to reflect new or revised Federal statutes or regulations, or material change in any phase of State law, organization, policy of IV-D agency operation.

(b) *Federal financial participation.* Except where otherwise provided, Federal financial participation is available in the additional expenditures resulting from an amended provision of the State plan as of the first day of the calendar quarter in which an approvable amendment is submitted or the date on which the amended provision becomes effective in the State, whichever is later.

(Approved by the Office of Management and Budget under control number 0960-0253)

[40 FR 27159, June 26, 1975, as amended at 51 FR 37731, Oct. 24, 1986]

§ 302.14 Fiscal policies and accountability.

The State plan shall provide that the IV-D agency, in discharging its fiscal accountability, will maintain an accounting system and supporting fiscal records adequate to assure that claims for Federal funds are in accord with applicable Federal requirements. The retention and custodial requirements for these records are prescribed in 45 CFR Part 74.

§ 302.15 Reports and maintenance of records.

(a) The State plan shall provide that:

(1) The IV-D agency will maintain records necessary for the proper and efficient operation of the plan, including records regarding:

(i) Applications pursuant to § 302.33 for support services available under the State plan;

(ii) Location of absent parents, actions to establish paternity and obtain and enforce support, and the costs incurred in such actions;

(iii) Amount and sources of support collections and the distribution of these collections;

(iv) Any fees charged or paid for support enforcement services;

(v) Any other administrative costs;

(vi) Any other information required by the Office; and

(vii) Statistical, fiscal, and other records necessary for reporting and accountability required by the Secretary.

The retention and custodial requirements for these records are prescribed in 45 CFR Part 74.

(2) The IV-D agency will make such reports in such form and containing such information, as the Secretary may from time to time require, and comply with such provisions as he may from time to time find necessary to assure the correctness and verification of such reports.

(b) *Conditions for optional use of microfilm copies.* Certified microfilm copies of the substantiating documents required for Federal audit and review purposes may be substituted for the originals (i.e., the originals may be destroyed), provided that:

(1) The IV-D agency can show, on the basis of a study of its record storage situation, that the use of microfilm copies is in the interest of efficiency and economy;

(2) The proposed microfilm system is adequate:

(i) To enable the IV-D agency to discharge its own audit responsibility for propriety of expenditures for which Federal financial participation is claimed and in no way hinders the IV-D agency's supervision and control of the programs; and

(ii) To enable the HHS Audit Agency and the Office to properly discharge their respective responsibilities for reviewing the manner in which all aspects of the Child Support Enforcement program are being administered in the State; and

(3) Prior approval is obtained from the regional office indicating that the system meets the conditions in paragraph (b)(2) of this section and that the proposed microfilming procedures are reliable and are supported by an adequate retrieval system.

(Approved by the Office of Management and Budget under control numbers 0960-0154, 0960-0226 and 0960-0238)

[40 FR 27159, June 26, 1975, as amended at 47 FR 57281, Dec. 23, 1982; 48 FR 51917, Nov. 15, 1983; 51 FR 37731, Oct. 24, 1986]

§ 302.17 Inclusion of State statutes.

The State plan shall provide a copy of State statutes, or regulations promulgated pursuant to such statutes and having the force of law (including citations of such statutes and regulations), that provide procedures to determine the paternity of a child born out of wedlock, to establish the child support obligation of a responsible parent, and to enforce a support obligation, including spousal support if appropriate.

(Approved by the Office of Management and Budget under control numbers 0960-0253 and 0960-0385)

[50 FR 19647, May 9, 1985, as amended at 51 FR 37731, Oct. 24, 1986]

§ 302.19 Bonding of employees.

The State plan shall provide that the following requirements and criteria to bond employees are in effect:

(a) *IV-D responsibility.* The IV-D agency will insure that every person, who has access to or control over funds collected under the child support enforcement program, is covered by a bond against loss resulting from employee dishonesty.

(b) *Scope.* The requirement in paragraph (a) of this section applies to every person who, as a regular part of his or her employment, receives, disburses, handles or has access to support collections, which includes:

(1) IV-D agency employees and employees of any other State or local agency to which IV-D functions have been delegated.

(2) Employees of a court or law enforcement official performing under a cooperative agreement with the IV-D agency.

(3) Employees of any private or governmental entity from which the IV-D agency purchases services.

(c) *Bond.* The bond will be for an amount which the State IV-D agency deems adequate to indemnify the State IV-D program for loss resulting from employee dishonesty.

(d) *Self-bonding System.* A State or political subdivision may comply with the requirement in paragraph (a) of this section:

(1) By means of a self-bonding system established under State law or,

(2) In the case of a political subdivision, by means of a self-bonding system approved by the State IV-D agency.

(e) *IV-D liability.* The requirements of this section do not reduce or limit the ultimate liability of the IV-D agency for losses of support collections from the State's IV-D program.

[44 FR 28803, May 17, 1979; 44 FR 45137, Aug. 1, 1979, as amended at 47 FR 57281, Dec. 23, 1982]

§ 302.20 Separation of cash handling and accounting functions.

The State plan shall provide that the following requirements and criteria to separate the cash handling and accounting functions are in effect.

(a) *IV-D responsibility.* The IV-D agency will maintain methods of administration designed to assure that persons responsible for handling cash receipts of support do not participate in accounting or operating functions which would permit them to conceal in the accounting records the misuse of support receipts. Such methods of administration shall follow generally recognized accounting standards.

(b) *Scope.* The requirement in paragraph (a) of this section applies to persons who participate in the collection, accounting or operating functions which include:

(1) IV-D agency employees and employees of any other State or local agency to which IV-D functions have been delegated.

(2) Employees of a court or law enforcement official performing under a

cooperative agreement with the IV-D agency.

(3) Employees of any private or governmental entity from which the IV-D agency purchases services.

(c) *Exception.* The Regional Office may grant a waiver to sparsely populated geographical areas, where the requirements in paragraph (a) of this section would necessitate the hiring of unreasonable numbers of additional staff. The IV-D agency must document such administrative infeasibility and provide an alternative system of controls that reasonably insures that support collections will not be misused.

[44 FR 28803, May 17, 1979, as amended at 47 FR 57281, Dec. 23, 1982]

§ 302.30 Publicizing the availability of support enforcement services.

Effective October 1, 1985, the State plan shall provide that the State will publicize regularly and frequently the availability of support enforcement services under the plan through public service announcements. Publicity must include information on any application fees which may be imposed for such services and a telephone number or postal address where further information may be obtained.

(Approved by the Office of Management and Budget under control number 0960-0385)

[50 FR 19647, May 9, 1985, as amended at 51 FR 37731, Oct. 24, 1986]

§ 302.31 Establishing paternity and securing support.

The State plan shall provide that:

(a) The IV-D agency will undertake:

(1) In the case of a child born out of wedlock with respect to whom an assignment under § 232.11 of this title or section 471(a)(17) of the Act is effective, to establish the paternity of such child; and

(2) In the case of any individual with respect to whom an assignment under § 232.11 of this title or section 471(a)(17) of the Act is effective, to secure support for a child or children from any person who is legally liable for such support, using State laws and reciprocal arrangements adopted with other States when appropriate. Effective October 1, 1985, this includes securing support for a spouse or former spouse who is living with the child or children, but only if a support obligation has been established for that spouse and the child support obligation is being enforced under the title IV-D State plan.

(3) When assigned support payments are received and retained by an AFDC recipient, to proceed as follows:

(i) In States that implement the IV-A State plan requirements to count retained support payments as income under 45 CFR 233.20(a)(3)(v), the IV-D agency shall notify the IV-A agency whenever it discovers that directly received payments are being, or have been, retained; or

(ii) In States that do not implement the IV-A State plan requirements to count retained support payments as income to meet need, the IV-D agency shall recover the retained support payments. This recovery by the IV-D agency shall be carried out in accordance with the standards for program operations provided in § 303.80 of this chapter.

(b) Upon receiving notice from the IV-A or IV-E agency that there has been a claim of good cause under § 232.40 of this title, the IV-D agency will suspend all activities to establish paternity or secure support until notified of a final determination by the IV-A or IV-E agency.

(c) The IV-D agency will not undertake to establish paternity or secure support in any case for which it has received notice from the IV-A or IV-E agency that there has been a finding of good cause pursuant to §§ 232.40 through 232.49 of this title unless there has been a determination by the State or local IV-A or IV-E agency that support enforcement may proceed without the participation of the caretaker or other relative. If there has been such a determination, the IV-D agency will undertake to establish paternity or secure support but may not involve the caretaker or other relative in such undertaking.

(Approved by the Office of Management and Budget under control number 0960-0385)

[50 FR 19647, May 9, 1985, as amended at 51 FR 25526, July 15, 1986; 51 FR 37731, Oct. 24, 1986]

§ 302.32 Collection and distribution of support payments by the IV-D agency.

The State plan shall provide that:

(a) In any case in which support payments are collected for a recipient of aid under the State's title IV-A plan with respect to whom an assignment under § 232.11 is effective, such payments shall be made to the IV-D agency and shall not be paid directly to the family.

(b) The IV-D agency must inform the State's IV-A agency of the amount of the collection which represents payment on the required support obligation for the month as determined in § 302.51(a) within 10 working days of the end of the month in which the support is received by the IV-D agency responsible for final distribution. Upon being informed of this amount, the IV-A agency will determine if such amount is sufficient to make the family ineligible for an assistance payment pursuant to the State's IV-A plan (See § 232.20 of Chapter II of this title.) If such amount is sufficient to make the family ineligible for an assistance payment, the IV-A agency will notify the IV-D agency and the IV-D agency will distribute the amount collected pursuant to § 302.51 of this part. The IV-D agency will notify the family that it will continue to provide services pursuant to § 302.51(e)(1) of this part.

(c) If the IV-A agency determines that the amount of the collection which represents payment on the required support obligation for the month does not make the family ineligible for an assistance payment, or if a hearing is requested pursuant to § 205.10 of this title, the IV-A agency will notify the IV-D agency of such fact and the IV-D agency will distribute such amount pursuant to § 302.51 of this part.

(d) To the extent any amount collected in a month includes payment on required support obligations for past months, that portion of such amount will be distributed by the IV-D agency pursuant to § 302.51(b) (4) and (5) of this part.

(e) Support collected in a month after any month in which the support collected makes the family ineligible for an assistance payment (pursuant to § 232.20 of this title) but prior to or in the month in which the family receives its last assistance payment, shall be used to reimburse the State for any assistance paid in such months with any excess being paid to the family. This provision will not apply when a hearing is requested pursuant to § 205.10 of this title. In these cases, when the hearing results in a determination that the family was ineligible for an assistance payment, the IV-D agency will determine the amount by which the entire support collection for a month that the family would have received pursuant to paragraph (b) of this section exceeds the amount the family actually received for a month as an assistance payment and pursuant to § 302.51. Such excess shall be paid to the family. If the family is determined to be eligible, distribution will continue to be made pursuant to § 302.51.

(f) *Timeframes for distribution of support payments.* (1) In interstate IV-D cases, amounts collected by the responding State on behalf of the initiating State must be forwarded to the initiating State within 15 calendar days of the initial point of receipt in the responding State, in accordance with § 303.7(c)(7)(iv).

(2) Amounts collected by the IV-D agency on behalf of recipients of aid under the State's title IV-A or IV-E plan for whom an assignment under § 232.11 of this title or section 471(a)(17) of the Act is effective shall be distributed as follows:

(i) When the IV-D agency sends payments to the family under § 302.51(b)(1) of this part, payments to the family must be sent to the family within 15 calendar days of the date of initial receipt in the State of the first $50 of support collected in a month, or, if less than $50 is collected in a month, within 15 calendar days of the end of the month in which the support was collected. When the IV-A agency sends payments to the family under § 302.51(b)(1) of this part, the IV-D agency must forward any amount due the family under

§ 302.51(b)(1) to the IV-A agency within 15 calendar days of the date of initial receipt in the State of the first $50 of support collected in a month, or, if less than $50 is collected in a month, within 15 calendar days of the end of the month in which the support was collected.

(ii) Except as specified under paragraph (f)(2)(iv) of this section, collections for the month after the month the family receives its last assistance payment and collections distributed under § 302.51(b)(3) and (5) of this part must be sent to the family within 15 calendar days of the date of initial receipt in the State of a collection for the first month of ineligibility.

(iii) Except as specified in paragraph (f)(2)(iv) of this section, collections in IV-E foster care cases under §§ 302.52(b)(2) and (4) of this part must be distributed within 15 calendar days of the date of initial receipt in the State.

(iv) Collections as a result of Federal or State income tax refund offset paid to the family under § 302.51(b)(5) of this part, or distributed in title IV-E foster care cases under § 302.52(b)(4) of this part, must be sent to the AFDC family or IV-E agency, as appropriate, within 30 calendar days of the date of initial receipt by the IV-D agency, unless State law requires a post-offset appeal process and an appeal is filed timely, in which case the IV-D agency must send any payment to the AFDC family or IV-E agency within 15 calendar days of the date the appeal is resolved.

(3) Amounts collected on behalf of individuals receiving services under § 302.33 of this part shall be distributed as follows:

(i) Amounts collected which represent payment on the current support obligation shall be sent to the family within 15 calendar days of the date of initial receipt in the State.

(ii) Except as specified in paragraph (f)(3)(iii) of this section, if the amount collected is more than the amount required to be distributed in paragraph (f)(3)(i) of this section, the State may at its discretion either send such amounts to the family to satisfy past-due support within 15 calendar days of the date of initial receipt in the State or retain such amounts as have been assigned to satisfy assistance paid to the family which has not been reimbursed.

(iii) Collections due the family under § 302.51(b)(5) as a result of Federal or State income tax refund offset must be sent to the family within 30 calendar days of the date of receipt in the IV-D agency, except:

(A) If State law requires a post-offset appeal process and an appeal is timely filed, in which case the IV-D agency must send any payment to the family within 15 calendar days of the date the appeal is resolved; or

(B) As provided in § 303.72(h)(5) of this chapter.

(Approved by the Office of Management and Budget under control number 0960-0385)

[40 FR 27159, June 26, 1975, as amended at 47 FR 57281, Dec. 23, 1982; 49 FR 22289, May 29, 1984; 50 FR 19648, May 9, 1985; 51 FR 37731, Oct. 24, 1986; 54 FR 32309, Aug. 4, 1989]

§ 302.33 Individuals not otherwise eligible for paternity and support services.

(a) *Availability of services.* The State plan must provide that the support collection or paternity determination services established under the plan shall be made available to any individual not receiving assistance under the Aid to Families with Dependent Children (AFDC) program who files an application for the services with the IV-D agency. In an interstate case, only the initiating State may require an application under this section.

(b) *Definitions.* For purposes of this section:

"Applicant's income" means the disposable income available for the applicant's use under State law.

(c) *Application fee.* (1) Until October 1, 1985, the State plan may provide for an application fee to be charged each individual who applies for services under this section. If the State elects to charge a fee, the State plan shall specify either:

(i) A flat dollar amount not to exceed $25 to be charged each applicant; or

(ii) A fee schedule to be used to determine the fee to be charged each applicant. Such fee schedule will be based on each applicant's income and will be designed so as not to discourage the application for such services by those most in need of them.

(2) Beginning October 1, 1985, the State plan must provide that an application fee will be charged for each individual who applies for services under this section. Under this paragraph:

(i) The State shall collect the application fee from the individual applying for IV-D services or pay the application fee out of State funds.

(ii) The State may recover the application fee from the absent parent who owes a support obligation to a non-AFDC family on whose behalf the IV-D agency is providing services and repay it to the applicant or itself.

(iii) State funds used to pay an application fee are not program expenditures under the State plan but are program income under § 304.50 of this chapter.

(iv) Any application fee charged must be uniformly applied on a statewide basis and must be:

(A) A flat dollar amount not to exceed $25 (or such higher or lower amount as the Secretary may determine to be appropriate for any fiscal year to reflect increases or decreases in administrative costs), or

(B) An amount based on a fee schedule not to exceed the flat dollar amount specified in paragraph (c)(2)(iv)(A) of this section. The fee schedule must be based on the applicant's income.

(v) The State may allow the jurisdiction that collects support for the State under this part to retain any application fee collected under this section.

(3) In an interstate case, the application fee is charged by the State where the individual applies for services under this section.

(d) *Recovery of costs.* (1) The State may elect in its State plan to recover any costs incurred in excess of any fees collected to cover administrative costs under the IV-D State plan. A State which elects to recover costs shall collect on a case by case basis either excess actual or standardized costs:

(i) From the individual who owes a support obligation to a non-AFDC family on whose behalf the IV-D agency is providing services under this section; or

(ii) From the individual who has filed an application for IV-D services under this section, either directly or from the support collected on behalf of the individual, but only if the State has in effect a procedure for informing all individuals authorized within the State to establish an obligation for support that the State will recover costs from the individual receiving IV-D services under this section.

(2) A State that recovers standardized costs under paragraph (d)(1) of this section shall develop a written methodology to determine standardized costs which are as close to actual costs as is possible. This methodology must be made available to any individual upon request.

(3) The IV-D agency shall not treat any amount collected from the individual as a recovery of costs under paragraph (d)(1)(i) of this section except amounts which exceed the current support owed by the individual under the obligation.

(4) If a State elects to recover costs under paragraph (d)(1)(ii) of this section, the IV-D agency may attempt to seek reimbursement from the individual who owes a support obligation for any costs paid by the individual who is receiving IV-D services and pay all amounts reimbursed to the individual who is receiving IV-D services.

(5) If a State elects to recover costs under this section, the IV-D agency must notify, consistent with the option selected, either the individual who has filed an application for IV-D services or the individual who owes a support obligation that such recovery will be made. In an interstate case, the IV-D agency where the case originated must notify the applicant of the States that recover costs.

(6) The IV-D agency must notify the IV-D agencies in all other States if it recovers costs from the individual receiving IV-D services.

(e) *Assignment.* (1) The IV-D agency may take an assignment of support rights from an individual who applies for services under this section. However, as assignment by an individual under this section does not constitute an assignment under § 232.11 of this title and may not be a condition of eligibility for services under this section.

(2) Before the applicant for IV-D services under this section makes an assignment of support rights, the IV-D agency shall inform the individual that the assignment is not a condition of eligibility for services under this section and may have the effect of making the support debt dischargeable in bankruptcy.

(Approved by the Office of Management and Budget under control numbers 0960-0253, 0960-0385, and 0960-0402)

[49 FR 36772, Sept. 19, 1984, as amended at 50 FR 19648, May 9, 1985; 51 FR 37731, Oct. 24, 1986]

§ 302.34 Cooperative arrangements.

(a) The State plan shall provide that the State will enter into written agreements for cooperative arrangements with appropriate courts and law enforcement officials. Such arrangements may be entered into with a single official covering more than one court, official, or agency, if the single official has the legal authority to enter into arrangements on behalf of the courts, officials, or agencies. Such arrangements shall contain provisions for providing courts and law enforcement officials with pertinent information needed in locating absent parents, establishing paternity and securing support, including the immediate transfer of the information obtained under § 235.70 of this title to the court or law enforcement official, to the extent that such information is relevant to the duties to be performed pursuant to the arrangement. They shall also provide for assistance to the IV-D agency in carrying out the program, and may relate to any other matters of common concern. Under matters of common concern, such arrangements may include provisions for the investigation and prosecution of fraud directly related to paternity and child and spousal support, and provisions to reimburse courts and law enforcement officials for their assistance.

(b) Cooperative arrangements entered into on or after October 1, 1989 must meet the criteria prescribed under § 303.107 of this chapter. Cooperative arrangements existing prior to October 1, 1989 must meet the criteria prescribed under § 303.107 of this chapter by October 1, 1990.

[54 FR 30222, July 19, 1989]

§ 302.35 State parent locator service.

The State plan shall provide as follows:

(a) The IV-D agency shall establish a State PLS using:

(1) All relevant sources of information and records available in the State, and in other States as appropriate; and

(2) The Federal PLS of the Department of Health and Human Services.

(b)(1) The IV-D agency shall establish a central State PLS office and may also designate additional IV-D offices within the State to submit requests to the Federal PLS.

(2) To designate more than two additional IV-D offices within the State, the IV-D agency must obtain written approval from the Office.

(c) The State PLS shall only accept requests to use the Federal PLS from:

(1) Any State or local agency or official seeking to collect child and spousal support obligations under the State plan, or medical support obligations if an agreement is in effect under § 306.2 of this chapter;

(2) A court that has authority to issue an order against an absent parent for the support and maintenance of a child, or any agency of such court;

(3) The resident parent, legal guardian, attorney, or agent of a child who is not receiving aid under title IV-A of the Act; and

(4) Authorized persons as defined in § 303.15 of this chapter if an agreement is in effect under § 303.15 to use the Federal PLS in connection with parental kidnapping or child custody cases.

[46 FR 54556, Nov. 3, 1981, as amended at 47 FR 57281, Dec. 23, 1982; 50 FR 19648, May 9, 1985]

§ 302.36 Provision of services in interstate IV-D cases.

(a) The State plan shall provide that the State will extend the full range of services available under its IV-D plan to any other State in accordance with the requirements set forth in § 303.7 of this chapter for:

(1) Locating an absent parent who is present in the State;

(2) Establishing paternity;

(3) Establishing a child support obligation;

(4) Securing compliance by an absent parent who is present in the State with a court order or an order of an administrative process established under State law for the support and maintenance of a child or children and of the spouse (or former spouse) who is living with the child or children and who is receiving services under a IV-D State plan in another State; and

(5) Carrying out any other functions required under its approved IV-D State plan.

(b) The State plan shall provide that the State will establish a central registry for interstate IV-D cases in accordance with the requirements set forth in § 303.7(a) of this chapter.

[53 FR 5256, Feb. 22, 1988]

§ 302.37 Distribution of support payments.

The State plan shall provide that, pursuant to the requirements of § 302.32 of this part, amounts collected as support will be distributed as provided in § 302.51.

[40 FR 27159, June 26, 1975, as amended at 47 FR 57281, Dec. 23, 1982]

§ 302.38 Payments to the family.

The State plan shall provide that any payment required to be made under §§ 302.32 and 302.51 of this part to a family will be made to the resident parent, legal guardian, or caretaker relative having custody of or responsibility for the child or children.

§ 302.39 Standards for program operation.

The State plan shall provide that the IV-D agency will comply with the standards for program operation and the organizational and staffing requirements prescribed by Part 303 of this chapter.

[41 FR 55348, Dec. 20, 1976]

§ 302.50 Support obligations.

The State plan shall provide as follows:

(a) The support rights assigned to the IV-D agency pursuant to § 232.11 of this title or section 471(a)(17) of the Act constitute an obligation owed to the State by the individual responsible for providing such support. Such obligation shall be established by:

(1) Order of a court of competent jurisdiction,

(2) Other legal process as established by State laws, such as an administrative hearing process or a legally enforceable and binding agreement; or,

(3) For cases receiving child support services under the provisions of section 402(a) (17) and (18) of the Act prior to July 1, 1975, the obligation may be that established by an agreement which was entered into prior to July 1, 1975 which does not meet the requirement of paragraph (a)(2) of this section. In the event of a breach of the agreement, such agreement must be superseded pursuant to paragraph (a) (1) or (2) of this section as soon as possible. All agreements not meeting the requirements of paragraph (a)(2) of this section must be superseded pursuant to paragraph (a) (1) or (2) of this section on the basis of one-third by January 1, 1976, two-thirds by July 1, 1976, and all by January 1, 1977;

(b) The amount of the obligation described in paragraph (a) of this section shall be:

(1) The amount specified in the order of a court of competent jurisdiction which covers the assigned support rights; or

(2) If there is no court order, an amount determined in writing by the IV-D agency as part of the legal process referred to in paragraph (a)(2) of this section in accordance with a formula which meets the criteria prescribed in § 302.53.

(c) The obligation described in paragraph (a) of this section shall be deemed for collection purposes to be collectible under all applicable State and local processes.

(d) Any amounts which represent support payments collected from an individual responsible for providing support under the State plan shall reduce, dollar for dollar, the amount of his obligation under this section.

(e) No portion of any amounts collected which represent a support obligation assigned under § 232.11 of this title may be used to satisfy a medical support obligation unless the court or administrative order requires a specific amount for medical support.

(Approved by the Office of Management and Budget under control number 0960-0385)

[40 FR 27159, June 26, 1975, as amended at 45 FR 8987, Feb. 11, 1980; 50 FR 19648, May 9, 1985; 51 FR 37731, Oct. 24, 1986]

§ 302.51 Distribution of support collections.

The State plan shall provide as follows:

(a) For the purposes of distribution under this section, amounts collected shall be treated first as payment on the required support obligation for the month in which the support was collected and if any amounts are collected which are in excess of such amount, these excess amounts shall be treated as amounts which represent payment on the required support obligation for previous months. (The IV-D agency may round off the converted amount to whole dollar amounts for the purposes of distribution under this section, §§ 302.52 and 304.12.) Effective June 9, 1988, the date of collection shall be the date on which the payment is received by the IV-D agency or the legal entity of any State or political subdivision actually making the collection, whichever is earliest.

(b) The amounts collected as support by the IV-D agency pursuant to the State plan for children and the parents of such children who are current recipients of aid under the State's title IV-A plan and for whom an assignment under § 232.11 of this title is effective shall be distributed as follows:

(1) Of any amount that is collected in a month which represents payment on the required support obligation for that month, the first $50 of such amount shall be paid to the family. This payment may not be used in determining the amount paid, if any, to the family in paragraph (b)(3) of this section. If the amount collected includes payment on the required support obligation for a previous month or months, the family shall only receive the first $50 of the amount which represents the required support obligation for the month in which the support was collected. If amounts are collected for one family which represent support payments from two or more absent parents, only the first $50 of the amount collected which represents the total required support obligation for the month in which the support was collected shall be paid to the family under this paragraph. No payment shall be made to a family under this paragraph for a month in which there is no child support collection.

(2) Any amount that is collected in a month which represents payment on the required support obligation for that month and is in excess of the amount paid to the family under paragraph (b)(1) of this section shall be retained by the State to reimburse, in whole or in part, the assistance payment for the month in which the support was collected or the next month. Of the amount retained by the State as reimbursement for that month's assistance payment, the IV-D agency shall determine the Federal Government's share of the amount so retained so the IV-A agency may reimburse the Federal Government to the extent of its participation in the financing of the assistance payment. From the Federal government's share, the State IV-D agency or political subdivision of the State pursuant to the title IV-D State plan shall deduct and pay the incentive payment, if any, prescribed in § 304.12.

(3) If the amount collected is in excess of the amount required to be distributed under paragraphs (b) (1) and (2) of this section, the family shall be paid such excess up to the difference between the assistance payment for the month in which the amount of the collection was used to redetermine eligibility for an assistance payment under the State's title IV-A plan (see § 302.32) and the court ordered amount for that month. If such court ordered amount is less than such assistance payment, no amount shall be paid to the family under this paragraph. In cases in which there is no court order, the family shall not be

paid any amount under this paragraph.

(4) If the amount collected is in excess of the amounts required to be distributed under paragraphs (b) (1) through (3) of this section, any such excess shall be retained by the State as reimbursement for past assistance payments made to the family for which the State has not been reimbursed. The State may apply the amount retained to any sequence of months for which it has not yet been reimbursed. Of the amount retained by the State as reimbursement of past assistance payments, the IV-D agency shall determine the Federal Government's share of the amounts so retained so the IV-A agency may reimburse the Federal Government to the extent of its participation in the financing of the assistance payments. From the Federal government's share, the State IV-D agency or political subdivision of the State pursuant to the title IV-D State plan shall deduct and pay the incentive payment, if any, prescribed in § 304.12. If past assistance payments are greater than the total support obligation owed, the maximum amount the State may retain as reimbursement for such assistance payments is the amount of such obligation, unless amounts are collected which represent the required support obligation for periods prior to the first month in which the family received assistance under the State's title IV-A plan, in which case such amounts may be retained by the State to reimburse the difference between such support obligation and such assistance payments.

(5) If the amount collected is in excess of the amounts required to be distributed under paragraphs (b)(1) through (4) of this section, such excess shall be paid to the family.

(c) If an amount collected as support represents payment on the required support obligation for future months, the amount shall be applied to such future months. However, no such amounts shall be applied to future months unless amounts have been collected which fully satisfy the support obligation assigned under section 402(a)(26) of the Act for the current month and all past months.

(d) Any amount paid under paragraph (b) (1), (3) or (5) of this section shall be identified as not being an assistance payment.

(e) Effective October 1, 1984, whenever a family ceases to receive assistance under the title IV-A State plan, the IV-D agency must;

(1) Continue to provide all appropriate title IV-D services for a period not to exceed three months from the month following the month in which the family ceased to receive assistance under the title IV-A State plan. The State may not charge fees or recover costs from support collections and must pay all amounts collected which represent monthly support payments to the family;

(2) Notify the family before the end of the period specified in paragraph (e)(1) of this section of the consequences of continuing to receive IV-D services, including the available services and the State's fees, cost recovery and distribution policies. The notice must inform the family that services will be continued unless the IV-D agency is notified to the contrary;

(3) At the end of the period referred to in paragraph (e)(1) of this section, if the IV-D agency is authorized to do so by the individual on whose behalf the services will be rendered, continue to provide all appropriate title IV-D services and pay any amounts collected which represent monthly support collections to the family in accordance with the requirements of § 302.33 of this part, except that the IV-D agency may not require any formal application or impose any application fee; and

(4) Report collections under this paragraph as non-AFDC collections.

(f) When a family ceases receiving assistance under the State's title IV-A plan, the assignment of support rights under § 232.11 of this title terminates, except with respect to the amount of any unpaid support obligation that has accrued under such assignment. From this accrued amount, the IV-D agency shall attempt to collect such unpaid obligation. Under this requirement:

(1) Such collections shall be used to reimburse any amounts of past assistance which have not been reimbursed under paragraph (b)(4) of this section;

(2) Of the amount collected, the IV-D agency shall determine the Federal Government's share of the collection so the IV-A agency may reimburse the Federal Government to the extent of its participation in the financing of the assistance payments. From the Federal Government's share the State IV-D agency or political subdivision of the State pursuant to the title IV-D State plan shall deduct and pay the incentive payment, if any, prescribed in § 304.12;

(3) Only amounts collected pursuant to this paragraph which exceed the amount of unreimbursed past assistance shall be paid to the family;

(4) For those cases in which collections are authorized under paragraph (e) of this section, priority shall be given to collection of current support.

(Approved by the Office of Management and Budget under control number 0960-0385)

[40 FR 27159, June 26, 1975, as amended at 47 FR 37889, Aug. 27, 1982; 47 FR 57281, Dec. 23, 1982; 49 FR 35605, Sept. 10, 1984; 50 FR 19648, May 9, 1985; 50 FR 31719, Aug. 6, 1985; 51 FR 37731, Oct. 24, 1986; 53 FR 21644, June 9, 1988; 54 FR 32309, Aug. 4, 1989; 54 FR 32309, Aug. 4, 1989]

§ 302.52 Distribution of support collected in Title IV-E foster care maintenance cases.

Effective October 1, 1984, the State plan shall provide as follows:

(a) For purposes of distribution under this section, amounts collected in foster care maintenance cases shall be treated in accordance with the provisions of § 302.51(a) of this part.

(b) The amounts collected as support by the IV-D agency under the State plan on behalf of children for whom the State is making foster care maintenance payments under the title IV-E State plan and for whom an assignment under section 471(a)(17) of the Act is effective shall be distributed as follows:

(1) Any amount that is collected in a month which represents payment on the required support obligation for that month shall be retained by the State to reimburse itself for foster care maintenance payments. Of that amount retained by the State as reimbursement for that month's foster care maintenance payment, the State IV-D agency shall determine the Federal government's share so that the State may reimburse the Federal government to the extent of its participation in financing of the foster care maintenance payment.

(2) If the amount collected is in excess of the monthly amount of the foster care maintenance payment but not more than the monthly support obligation, the State must pay the excess to the State agency responsible for supervising the child's placement and care under section 472(a)(2) of the Act. The State agency must use the money in the manner it determines will serve the best interests of the child including:

(i) Setting aside amounts for the child's future needs; or

(ii) Making all or part of the amount available to the person responsible for meeting the child's daily needs to be used for the child's benefit.

(3) If the amount collected exceeds the amount required to be distributed under paragraphs (b)(1) and (2) of this section, but not the total unreimbursed foster care maintenance payments provided under title IV-E or unreimbursed assistance payments provided under title IV-A, the State shall retain the excess to reimburse itself for these payments. If past assistance or foster care maintenance payments are greater than the total support obligation owed, the maximum amount the State may retain as reimbursement for such payments is the amount of such obligation. If amounts are collected which represent the required support obligation for periods prior to the first month in which the family received assistance under the State's title IV-A plan or foster care maintenance payments under the State's title IV-E plan, such amounts may be retained by the State to reimburse the difference between such support obligation and such payments. Of the amounts retained by the State, the State IV-D agency shall determine the Federal government's share of the amount so that the State may reimburse the Federal government to the extent of its participation in financing the assistance payments and foster care maintenance payments.

(4) Any balance shall be paid to the State agency responsible for supervising the child's placement and care and shall be used to serve the best interests of the child as specified in paragraph (b)(2) of this section.

(5) If an amount collected as support represents payment on the required support obligation for future months, the amount shall be applied to those future months. However, no amounts shall be applied to future months unless amounts have been collected which fully satisfy the support obligation assigned under § 232.11 of this title and section 471(a)(17) of the Act for the current month and all past months.

(c) When a State ceases making foster care maintenance payments under the State's title IV-E State plan, the assignment of support rights under section 471(a)(17) of the Act terminates except for the amount of any unpaid support that has accrued under the assignment. The IV-D agency shall attempt to collect such unpaid support. Under this requirement, any collection made by the State under this paragraph must be distributed in accordance with paragraph (b)(3) of this section.

(Approved by the Office of Management and Budget under control number 0960-0385)

[50 FR 19648, May 9, 1985, as amended at 50 FR 31719, Aug. 6, 1985; 51 FR 37731, Oct. 24, 1986]

§ 302.53 Formula for determining the amount of the obligation.

The State plan shall provide as follows:

(a) There shall be a formula to be utilized by the IV-D agency in determining the amount of the support obligation pursuant to § 302.50 when there is no court order covering the obligation. Such formula must take into consideration the following criteria:

(1) All earnings, income and resources of the absent parent including real and personal property;

(2) The earnings potential of the absent parent;

(3) The reasonable necessities of the absent parent;

(4) The ability of the absent parent to borrow;

(5) The needs of the child for whom the support is sought;

(6) The amount of assistance which would be paid to the child under the full standard of need of the State's IV-A plan;

(7) The existence of other dependents; and

(8) Other reasonable criteria which the State may choose to incorporate.

(b) The formula described in paragraph (a) of this section must be designed to insure, as a minimum, that the child for whom support is sought benefits from the income and resources of the absent parent on an equitable basis in comparison with any other minor children of the absent parent.

(c) The formula described in paragraph (a) of this section shall be utilized to determine the required monthly support obligation, the amount of support obligation arrearage, if any, and the amount to be paid periodically against such arrearage.

[47 FR 7428, Feb. 19, 1982]

§ 302.54 Notice of collection of assigned support.

(a) Effective October 1, 1985, the State plan shall provide that the IV-D agency, at least annually, must send a notice of the amount of support payments collected during the past year to individuals who have assigned rights to support under § 232.11 of this title.

(b) The notice must list separately payments collected from each absent parent when more than one absent parent owes support to the family and must indicate the amount of support collected which was paid to the family.

(Approved by the Office of Management and Budget under control number 0960-0385)

[50 FR 19649, May 9, 1985, as amended at 51 FR 37731, Oct. 24, 1986]

§ 302.55 Incentive payments to States and political subdivisions.

Effective October 1, 1985, in order for the State to be eligible to receive any incentive payments under § 304.12 of this chapter, the State plan shall provide that, if one or more political subdivisions of the State participate in the costs of carrying out the activities under the State plan during any period, each such subdivision shall be entitled to receive an appropriate share of any incentive payments made to the State for such period, as determined by the State in accordance with § 303.52 of this chapter, taking into account the efficiency and effectiveness of the political subdivision in carrying out the activities under the State plan.

(Approved by the Office of Management and Budget under control number 0960-0385)

[50 FR 19649, May 9, 1985; 50 FR 23958, June 7, 1985, as amended at 51 FR 37731, Oct. 24, 1986; 54 FR 32309, Aug. 4, 1989]

§ 302.56 Guidelines for setting child support awards.

(a) Effective October 1, 1987, as a condition for approval of its State plan, the State shall establish guidelines by law or by judicial or administrative action for setting child support award amounts within the State.

(b) The State shall have procedures for making the guidelines available to all persons in the State whose duty it is to set child support award amounts, but the guidelines need not be binding on those persons.

(c) The guidelines must be based on specific descriptive and numeric criteria and result in a computation of the support obligation.

(d)The State must include a copy of the guidelines in its State plan.

(Approved by the Office of Management and Budget under control number 0960-0385)

[50 FR 19649, May 9, 1985; 50 FR 23958, June 7, 1985, as amended at 51 FR 37731, Oct. 24, 1986]

§ 302.57 Procedures for the payment of support through the IV-D agency or other entity.

(a) Effective October 1, 1985, the State may have in effect and use procedures for the payment of support through the State IV-D agency or the entity designated by the State to administer the State's withholding system upon the request of either the absent parent or custodial parent, regardless of whether or not arrearages exist or withholding procedures have been instituted.

(b) If the State opts to establish procedures described in paragraph (a) of this section, the State must:

(1) Monitor all amounts paid and the dates of payments and record them on an individual payment record;

(2) Ensure prompt payment to the custodial parent; and

(3) Require the requesting parent to pay a fee for the cost of providing the service not to exceed $25 annually and not to exceed State costs.

(Approved by the Office of Management and Budget under control number 0960-0385)

[50 FR 19649, May 9, 1985, as amended at 51 FR 37731, Oct. 24, 1986]

§ 302.60 Collection of past-due support from Federal tax refunds.

The State plan shall provide that:

(a) The IV-D agency has in effect procedures necessary to obtain payment of past-due support from Federal tax refunds as set forth in section 464 of the Act, § 303.72 of this chapter, and regulations of the Internal Revenue Service at 26 CFR 304.6402-1; and

(b) The IV-D agency shall take the steps necessary to implement and use these procedures.

(Approved by the Office of Management and Budget under control number 0960-0253)

[47 FR 7428, Feb. 19, 1982]

§ 302.65 Withholding of unemployment compensation.

The State plan shall provide that the requirements of this section are met.

(a) *Definitions.* When used in this section:

"Legal process" means a writ, order, summons or other similar process in the nature of a garnishment, which is issued by a court of competent jurisdiction or by an authorized official pursuant to an order of such court or pursuant to State or local law.

"State employment security agency" or "SESA" means the State agency charged with the administration of the State unemployment compensation laws in accordance with title III of the Act.

"Unemployment compensation" means any compensation payable under State unemployment compensation law (including amounts payable in accordance with agreements under any Federal unemployment compensation law). It includes extended benefits, unemployment compensation for Federal employees, unemployment compensation for ex-servicemen, trade readjustment allowances, disaster unemployment assistance, and payments under the Redwood National Park Expansion Act.

(b) *Agreement.* The State IV-D agency shall enter into a written agreement with the SESA in its State for the purpose of withholding unemployment compensation from individuals with unmet support obligations being enforced by the IV-D agency. The IV-D agency shall agree only to a withholding program that it expects to be cost-effective and to reimbursement for the SESA's actual, incremental costs of providing services to the IV-D agency.

(c) *Functions to be performed by the IV-D agency.* The IV-D agency shall:

(1) Determine periodically from information provided by the SESA under section 508 of the Unemployment Compensation Amendments of 1976 whether individuals applying for or receiving unemployment compensation owe support obligations that are being enforced by the IV-D agency.

(2) Enforce unmet support obligations by arranging for the withholding of unemployment compensation based on a voluntary agreement with the individual who owes the support, or in appropriate cases which meet the case selection criteria established under paragraph (c)(3), through legal process pursuant to State or local law. If a voluntary agreement is obtained, the IV-D agency must give the SESA a copy of the voluntary agreement.

(3) Establish and use written criteria for selecting cases to pursue via the withholding of unemployment compensation for support purposes. These criteria must be designed to insure maximum case selection and minimal discretion in the selection process.

(4) Provide a receipt at least annually to an individual who requests a receipt for the support paid via the withholding of unemployment compensation, if receipts are not provided through other means.

(5) Maintain direct contact with the SESA in its State:

(i) By processing cases through the SESA in its own State or through IV-D agencies in other States; and

(ii) By receiving all amounts withheld by the SESA in its own State and forwarding any amounts withheld on behalf of IV-D agencies in other States to those agencies.

(6) Reimburse the administrative costs incurred by the SESA that are actual, incremental costs attributable to the process of withholding unemployment compensation for support purposes insofar as these costs have been agreed upon by the SESA and the IV-D agency.

(7) Review and document, at least annually, program operations, including case selection critieria established under paragraph (c)(3), and costs of the withholding process versus the amounts collected and, as necessary, modify procedures and renegotiate the services provided by the SESA to improve program and cost effectiveness.

[49 FR 8927, Mar. 9, 1984]

§ 302.70 Required State laws.

(a) *Required laws.* Effective October 1, 1985, with respect to paragraphs (a)(1) through (8) of this section, and effective October 21, 1986, with respect to paragraph (a)(9) of this section, the State plan shall provide that, in accordance with sections 454(20) and 466 of the Act, the State has in effect laws providing for and has implemented the following procedures to improve program effectiveness:

(1) Procedures for carrying out a program of withholding under which new or existing support orders are subject to the State law governing withholding so that a portion of the absent parent's wages may be withheld, in accordance with the requirements set forth in § 303.100 of this chapter;

(2) Expedited processes to establish and enforce child support obligations having the same force and effect as those established through full judicial process, in accordance with the re-

quirements set forth § 303.101 of this chapter;

(3) Procedures for obtaining overdue support from State income tax refunds on behalf of recipients of aid under the State's title IV-A or IV-E plan with respect to whom an assignment under § 232.11 of this title or section 471(a)(17) of the Act is effective, and on behalf of individuals who apply for services under § 302.33 of this part in accordance with the requirements set forth in § 303.102 of this chapter;

(4) Procedures for the imposition of liens against the real and personal property of absent parents who owe overdue support, in accordance with the requirements set forth in § 303.103 of this chapter;

(5) Procedures for the establishment of paternity for any child at least to the child's 18th birthday;

(6) Procedures which require that an absent parent give security, post a bond, or give some other guarantee to secure payment of support, in accordance with the procedures set forth in § 303.104 of this chapter;

(7) Procedures for making information regarding the amount of overdue support owed by an absent parent available to consumer reporting agencies, in accordance with § 303.105 of this chapter;

(8) Procedures under which all child support orders which are issued or modified in the State will include provision for withholding from wages, in order to assure that withholding as a means of collecting child support is available if arreareages occur without the necessity of filing application for services under § 302.33 of this part, in accordance with § 303.100(h) of this chapter; and

(9) Procedures which require that any payment or installment of support under any child support order, whether ordered through the State judicial system or through the expedited processes required by paragraph (a)(2) of this section, is (on and after the date it is due):

(i) A judgment by operation of law, with the full force, effect, and attributes of a judgment of the State, including the ability to be enforced;

(ii) Entitled as a judgment to full faith and credit in such State and in any other State; and

(iii) Not subject to retroactive modification by such State or by any other State, except as provided in § 303.106(b).

(b) A State need not apply a procedure required under paragraphs (a)(3), (4), (6) and (7) of this section in an individual case if the State determines that it is not appropriate using guidelines generally available to the public which take into account the payment record of the absent parent, the availability of other remedies, and other relevant considerations. The guidelines may not determine a majority of cases in which no other remedy is being used to be inappropriate.

(c) State laws enacted under this section must give States sufficient authority to comply with the requirements of §§ 303.100 through 303.105 of this chapter.

(d)(1) *Exemption.* A State may apply for an exemption from any of the requirements of paragraphs (a)(1) through (8) of this section by the submittal of a request for exemption to the appropriate Regional Office.

(2) *Basis for granting exemption.* The Secretary will grant a State, or political subdivision in the case of paragraph (a)(2), an exemption from any of the requirements of paragraphs (a)(1) through (8) of this section for a period not to exceed three years if the State demonstrates that compliance would not increase the effectiveness and efficiency of its Child Support Enforcement program. Demonstration of the program's efficiency and effectiveness must be shown by actual, or, if actual is not available, estimated data pertaining to caseloads, processing times, administrative costs, and average support collections or such other actual or estimated data as the Office may request. The State must demonstrate to the satisfaction of the Secretary that the program's effectiveness would not improve by using these procedures. Disapproval of a request for exemption is not subject to appeal.

(3) *Review of exemption.* The exemption is subject to continuing review by the Secretary and may be terminated upon a change in circum-

stances or reduced effectiveness in the State or political subdivision, if the State cannot demonstrate that the changed circumstances continue to warrant an exemption in accordance with this section.

(4) *Request for extension.* The State must request an extension of the exemption by submitting current data in accordance with paragraph (d)(2) of this section 90 days prior to the end of the exemption period granted under paragraph (d)(2) of this section.

(5) *When an exemption is revoked or an extension is denied.* If the Secretary revokes an exemption or does not grant an extension of an exemption, the State must enact the appropriate laws and procedures to implement the mandatory practice by the beginning of the fourth month after the end of the first regular, special, budget or other session of the State's legislature which ends after the date the exemption is revoked or the extension is denied. If no State law is necessary, the State must establish and be using the procedure by the beginning of the fourth month after the date the exemption is revoked.

(Approved by the Office of Management and Budget under control number 0960-0385)

[50 FR 19649, May 9, 1985, as amended at 51 FR 37731, Oct. 24, 1986; 54 FR 15764, Apr. 19, 1989]

§ 302.75 Procedures for the imposition of late payment fees on absent parents who owe overdue support.

(a) Effective September 1, 1984, the State plan may provide for imposition of late payment fees on absent parents who owe overdue support.

(b) If a State opts to impose late payment fees—

(1) The late payment fee must be uniformly applied in an amount not less than 3 percent nor more than 6 percent of overdue support.

(2) The fee shall accrue as arrearages accumulate and shall not be reduced upon partial payment of arrears. The fee may be collected only after the full amount of overdue support is paid and any requirements under State law for notice to the absent parent have been met.

(3) The collection of the fee must not directly or indirectly reduce the amount of current or overdue support paid to the individual to whom it is owed.

(4) The late payment fee must be imposed in cases where there is an assignment under § 232.11 of this title or section 471(a)(17) of the Act or where an application for services has been filed under § 302.33 of this part.

(5) The State may allow fees collected to be retained by the jurisdiction making the collection.

(6) The State must reduce its expenditures claimed under the Child Support Enforcement program by any fees collected under this section in accordance with § 305.50 of this chapter.

(Approved by the Office of Management and Budget under control number 0960-0385)

[50 FR 19650, May 9, 1985, as amended at 51 FR 37731, Oct. 24, 1986]

§ 302.80 Medical support enforcement.

(a) The State plan may provide that the IV-D agency will secure and enforce medical support obligations under a cooperative agreement between the IV-D agency and the State Medicaid agency. Cooperative agreements must comply with the requirements contained in Part 306 of this chapter.

(b) The State plan must provide that the IV-D agency shall secure medical support information and establish and enforce medical support obligations in accordance with the requirements contained in §§ 303.30 and 303.31 of this chapter.

(Approved by the Office of Management and Budget under control number 0960-0420)

[50 FR 41894, Oct. 16, 1985, as amended at 51 FR 37731, Oct. 24, 1986; 54 FR 32309, Aug. 4, 1989]

§ 302.85 Computerized support enforcement systems eligible for 90 percent FFP.

The State plan may provide for the establishment of a computerized support enforcement system funded at 90 percent Federal financial participation that meets the requirements in § 307.10 of this chapter.

(Approved by the Office of Management and Budget under control numbers 0960-0344 and 0960-0253)

[49 FR 33263, Aug. 22, 1984, as amended at 51 FR 37731, Oct. 24, 1986]

PART 303—STANDARDS FOR PROGRAM OPERATIONS

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303.107 Requirements for cooperative arrangements.

AUTHORITY: 42 U.S.C. 651 through 658, 660, 663, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p) and 1396(k).

SOURCE: 40 FR 27164, June 26, 1975, unless otherwise noted.

§ 303.0 Scope and applicability of this part.

This part prescribes:

(a) The minimum organizational and staffing requirements the State IV-D agency must meet in carrying out the IV-D program and,

(b) The standards for program operation which the IV-D agency must meet.

[41 FR 55348, Dec. 20, 1976, as amended at 54 FR 32309, Aug 4, 1989]

§ 303.1 Definitions.

The definitions found in § 301.1 of this chapter also are applicable to this part.

§ 303.2 Establishment of cases and maintenance of case records.

(a) The IV-D agency must:

(1) Make applications for child support services readily accessible to the public;

(2) When an individual requests an application or IV-D services, provide an application to the individual on the day the individual makes a request in person or send an application to the individual within no more than 5 working days of a written or telephone request. Information describing available services, the individual's rights and responsibilities, and the State's fees, cost recovery and distribution policies must accompany all applications for services and must be provided to AFDC, Medicaid and title IV-E foster care applicants or recipients within no more than 5 working days of referral to the IV-D agency; and

(3) Accept an application as filed on the day it and the application fee are received. An application is a written document provided by the State which indicates that the individual is applying for child support enforcement services under the State's title IV-D

program and is signed by the individual applying for IV-D services.

(b) For all cases referred to the IV-D agency or applying for services under § 302.33 of this chapter, the IV-D agency must, within no more than 20 calendar days of receipt of referral of a case or filing of an application for services under § 302.33, open a case by establishing a case record and, based on an assessment of the case to determine necessary action:

(1) Solicit necessary and relevant information from the custodial parent and other relevant sources and initiate verification of information, if appropriate; and

(2) If there is inadequate location information to proceed with the case, request additional information or refer the case for further location attempts, as specified in § 303.3.

(c) The case record must be supplemented with all information and documents pertaining to the case, as well as all relevant facts, dates, actions taken, contacts made and results in a case.

[54 FR 32309, Aug. 4, 1989]

§ 303.3 Location of absent parents.

(a) *Definition.* "Location" means information concerning the physical whereabouts of the absent parent, or the absent parent's employer(s), other sources of income or assets, as appropriate, which is sufficient and necessary to take the next appropriate action in a case.

(b) For all cases referred to the IV-D agency or applying for services under § 302.33 of this chapter, the IV-D agency must attempt to locate all absent parents or sources of income and/or assets when location is necessary to take necessary action. Under this standard, the IV-D agency must:

(1) Use appropriate location sources such as the Federal PLS; interstate location networks; local officials and employees administering public assistance, general assistance, medical assistance, food stamps and social services (whether such individuals are employed by the State or a political subdivision); relatives and friends of the absent parent; current or past employers; the local telephone company; the U.S. Postal Service; financial references; unions; fraternal organizations; and police, parole, and probation records if appropriate; and State agencies and departments, as authorized by State law, including those departments which maintain records of public assistance, wages and employment, unemployment insurance, income taxation, driver's licenses, vehicle registration, and criminal records;

(2) Establish working relationships with all appropriate agencies in order to utilize locate resources effectively;

(3) Within no more than 75 calendar days of determining that location is necessary, access all appropriate location sources, including transmitting appropriate cases to the Federal PLS, and ensure that location information is sufficient to take the next appropriate action in a case;

(4) Refer appropriate cases to the IV-D agency of any other State, in accordance with the requirements of § 303.7 of this Part. The IV-D agency of such other State shall follow the procedures in paragraphs (b)(1) through (b)(3) of this section for such cases, as necessary, except that the responding State is not required to access the Federal PLS under paragraph (b)(3) of this section;

(5) Repeat location attempts in cases in which previous attempts to locate absent parents or sources of income and/or assets have failed, but adequate identifying and other information exists to meet requirements for submittal for location, either quarterly or immediately upon receipt of new information which may aid in location, whichever occurs sooner. Quarterly attempts may be limited to automated sources but must include accessing State employment security files. Repeated attempts because of new information which may aid in location must meet the requirements of paragraph (b)(3) of this section; and

(6) Submit to the Federal PLS at least annually cases in which location is needed and previous attempts to locate have failed and which meet the requirements for submittal.

(c) The State must establish guidelines defining diligent efforts to serve process. These guidelines must include periodically repeating service of process attempts in cases in which previous attempts to serve process have failed, but adequate identifying and other information exists to attempt service of process.

[54 FR 32310, Aug. 4, 1989, as amended at 55 FR 25840, June 25, 1990]

§ 303.4 Establishment of support obligations.

For all cases referred to the IV-D agency or applying under § 302.33 of this chapter, the IV-D Agency must:

(a) When necessary, establish paternity pursuant to the standards of § 303.5;

(b) Utilize appropriate State statutes and legal processes in establishing the support obligation pursuant to § 302.50 of this chapter.

(c) Review the support obligation periodically and whenever the IV-D agency becomes aware of changes in the factors which determine the amount of the support obligation.

(d) Within 90 calendar days of locating an absent parent or of establishing paternity, establish an order for support, or complete service of process necessary to commence proceedings to establish a support order (or document unsuccessful attempts to serve process, in accordance with the State's guidelines defining diligent efforts under § 303.3(c)).

(e) If the court or administrative authority dismisses a petition for a support order without prejudice, the IV-D agency must, at the time of dismissal, examine the reasons for dismissal and determine when it would be appropriate to seek an order in the future, and seek a support order at that time.

[40 FR 27164, June 26, 1975, as amended at 50 FR 19650, May 9, 1985; 54 FR 32310, Aug. 4, 1989]

§ 303.5 Establishment of paternity.

(a) For all cases referred to the IV-D agency or applying for services under § 302.33 of this chapter in which paternity has not yet been established:

(1) The IV-D agency must, within no more than 90 calendar days of locating the alleged father, file for paternity establishment or complete service of process to establish paternity (or document unsuccessful attempts to serve process, in accordance with the State's guidelines defining diligent efforts under § 303.3(c)), whichever occurs later in accordance with State procedures for paternity establishment.

(2) Paternity must be established or the alleged father excluded as a result of genetic tests and/or legal process within one year of the later of:

(i) Successful service of process; or,

(ii) The child reaching 6 months of age.

(3) In any case where an alleged father is excluded but more than one alleged father has been identified, the IV-D agency must meet the requirements set forth in paragraph (a)(1) and (2) of this section for each alleged father identified.

(b) The IV-D agency need not attempt to establish paternity in any case involving incest or forcible rape, or in any case in which legal proceedings for adoption are pending, if, in the opinion of the IV-D agency, it would not be in the best interests of the child to establish paternity.

(c) The IV-D agency must identify and use through competitive procurement laboratories which perform, at reasonable cost, legally and medically acceptable genetic tests which tend to identify the father or exclude the alleged father. The IV-D agency must make available a list of such laboratories to appropriate courts and law enforcement officials, and to the public upon request.

[40 FR 27164, June 26, 1975, as amended at 50 FR 19650, May 9, 1985; 54 FR 32310, Aug. 4, 1989]

§ 303.6 Enforcement of support obligations.

For all cases referred to the IV-D agency or applying for services under § 302.33 in which the obligation to support and the amount of the obligation have been established, the IV-D agency must maintain and use an effective system for:

(a) Monitoring compliance with the support obligation;

(b) Identifying on the date the parent fails to make payments in an amount equal to the support payable for one month, or on an earlier date in accordance with State law, those cases in which there is a failure to comply with the support obligation; and

(c) Enforcing the obligation by:

(1) Initiating income withholding, in accordance with § 303.100;

(2) Taking any appropriate enforcement action (except income withholding and Federal and State income tax refund offset) unless service of process is necessary, within no more than 30 calendar days of identifying a delinquency or other support-related noncompliance with the order or the location of the absent parent, whichever occurs later. If service of process is necessary prior to taking an enforcement action, service must be completed (or unsuccessful attempts to serve process must be documented in accordance with the State's guidelines defining diligent efforts under § 303.3(c)), and enforcement action taken if process is served, within no later than 60 calendar days of identifying a delinquency or other support-related noncompliance with the order, or the location of the absent parent, whichever occurs later;

(3) Submitting once a year all cases which meet the certification requirements under § 303.102 of this part and State guidelines developed under § 302.70(b) of this title for State income tax refund offset, and which meet the certification requirements under § 303.72 of this part for Federal income tax refund offset; and

(4) In cases in which enforcement attempts have been unsuccessful, at the time an attempt to enforce fails, examining the reason the enforcement attempt failed and determining when it would be appropriate to take an enforcement action in the future, and taking an enforcement action in accordance with the requirements of this section at that time.

[54 FR 32310, Aug. 4, 1989, as amended at 55 FR 25840, June 25, 1990]

§ 303.7 Provision of services in interstate IV-D cases.

(a) *Interstate central registry.* (1) The State IV-D agency must establish an interstate central registry responsible for receiving, distributing and responding to inquiries on all incoming interstate IV-D cases, including URESA petitions and requests for wage withholding in IV-D cases, and at the option of the State, intrastate IV-D cases no later than August 22, 1988.

(2) Within 10 working days of receipt of an interstate IV-D case from an initiating State, the central registry must:

(i) Ensure that the documentation submitted with the case has been reviewed to determine completeness;

(ii) Forward the case for necessary action either to the State PLS for location services or to the appropriate agency for processing;

(iii) Acknowledge receipt of the case and ensure that any missing documentation has been requested from the initiating State; and

(iv) Inform the IV-D agency in the initiating State where the case was sent for action.

(3) If the documentation received with a case is inadequate and cannot be remedied by the central registry without the assistance of the initiating State, the central registry must forward the case for any action which can be taken pending necessary action by the initiating State.

(4) The central registry must respond to inquiries from other States within 5 working days of receipt of the request for a case status review.

(b) *Initiating State IV-D agency responsibilities.* The IV-D agency must:

(1) If the State has a long-arm statute which allows paternity establishment, use the authority to establish paternity whenever appropriate.

(2) Except as provided in paragraph (b)(1), within 20 calendar days of determining that the absent parent is in another State refer any interstate IV-D case to the responding State's interstate central registry for action, including URESA petitions and requests for location, document verification, administrative reviews in Federal income tax refund offset cases, wage withholding, and State income tax refund offset in IV-D cases.

(3) Provide the IV-D agency in the responding State sufficient, accurate information to act on the case by submitting with each case any necessary documentation and either the Interstate Child Support Enforcement Transmittal Form or the URESA

Action Request Forms package as appropriate. The State may use computer-generated replicas in the same format and containing the same information in place of the forms.

(4) Provide the IV-D agency or central registry in the responding State with any requested additional information or notify the responding State when the information will be provided within 30 calendar days of receipt of the request for information by submitting an updated form, or a computer-generated replica in the same format and containing the same information, and any necessary additional documentation.

(5) Notify the IV-D agency in the responding State within 10 working days of receipt of new information on a case by submitting an updated form and any necessary additional documentation.

(c) *Responding State IV-D agency responsibilities.* (1) The IV-D agency must establish and use procedures for managing its interstate IV-D caseload which ensure provision of necessary services and include maintenance of case records in accordance with § 303.2 of this part.

(2) The IV-D agency must periodically review program performance on interstate IV-D cases to evaluate the effectiveness of the procedures established under this section.

(3) The State must ensure that the organizational structure and staff of the IV-D agency are adequate to provide for the administration or supervision of the following support enforcement functions specified in § 303.20(c) of this part for its interstate IV-D caseload: Intake; establishment of paternity and the legal obligation to support; location; financial assessment; establishment of the amount of child support; collection; monitoring; enforcement and investigation.

(4) Within 75 calendar days of receipt of an Interstate Child Support Enforcement Transmittal Form, a URESA Action Request Form or other alternative State form and documentation from its interstate central registry, the IV-D agency must:

(i) Provide location services in accordance with § 303.3 of this part if the request is for location services or the form or documentation does not include adequate location information on the absent parent;

(ii) If unable to proceed with the case because of inadequate documentation, notify the IV-D agency in the initiating State of the necessary additions or corrections to the form or documentation.

(iii) If the documentation received with a case is inadequate and cannot be remedied by the responding IV-D agency without the assistance of the initiating State, the IV-D agency must process the interstate IV-D case to the extent possible pending necessary action by the initiating State.

(5) Within 10 working days of locating the absent parent in a different jurisdiction within the State, the IV-D agency must forward the form and documentation to the appropriate jurisdiction and notify the initiating State and central registry of its action.

(6) Within 10 working days of locating the absent parent in a different State, the IV-D agency must—

(i) Return the form and documentation, including the new location, to the initiating State, or, if directed by the initiating State, forward the form and documentation to the central registry in the State where the absent parent has been located; and

(ii) Notify the central registry where the case has been sent.

(7) The IV-D agency must provide any necessary services as it would in intrastate IV-D cases by:

(i) Establishing paternity in accordance with § 303.5 of this part and attempting to obtain a judgment for costs should paternity be established;

(ii) Establishing a child support obligation in accordance with §§ 303.4 and 303.101 of this part and § 303.31 of this chapter;

(iii) Processing and enforcing orders referred by another State, whether pursuant to the Uniform Reciprocal Enforcement of Support Act or other legal processes, using appropriate remedies applied in its own cases in accordance with §§ 303.6 and 303.100 through 303.105 of this part and § 303.31 of this chapter; and

(iv) Collecting and monitoring any support payments from the absent parent and forwarding payments to the location specified by the IV-D agency in the initiating State no later than 10 days after the collection is received by the responding State IV-D agency except with respect to certain Federal tax refund offset collections as specified in § 303.72(h)(5) of this part. The IV-D agency must include sufficient information to identify the case, indicate when the payment was received at the initial point of receipt by the IV-D agency or legal entity of the State or political subdivision actually making the collection, whichever is earlier, and include the responding State's identifying code as defined in the Federal Information Processing Standards Publication (FIPS) issued by the National Bureau of Standards or the Worldwide Geographic Location Code issued by the General Services Administration.

(8) The IV-D agency must provide timely notice to the IV-D agency in the initiating State in advance of any formal hearings which may result in establishment or modification of an order.

(9) The IV-D agency must notify the IV-D agency in the initiating State within 10 working days of receipt of new information on a case by submitting an updated form or a computer-generated replica in the same format and containing the same information.

(10) The IV-D agency must notify the interstate central registry in the responding State when a case is closed.

(d) *Payment and recovery of costs in interstate IV-D cases.* (1) Except as provided in paragraphs (2) and (4), the IV-D agency in the responding State must pay the costs it incurs in processing interstate IV-D cases.

(2) The IV-D agency in the initiating State must pay for the costs of blood testing in actions to establish paternity.

(3) If paternity is established in the responding State, the IV-D agency in the responding State must attempt to obtain a judgment for the costs of blood testing from the putative father, and, if costs of blood testing are recovered, must reimburse the initiating State.

(4) Each IV-D agency may recover its costs of providing services in interstate non-AFDC cases in accordance with § 302.33(d) of this chapter.

(5) The IV-D agency in the responding State must identify any fees or costs deducted from support payments when forwarding payments to the IV-D agency in the initiating State in accordance with § 303.7(c)(7)(iv) of this section.

(Approved by the Office of Management and Budget under control number 0970-0085)

[53 FR 5257, Feb. 22, 1988, as amended at 53 FR 18987, May 26, 1988; 53 FR 21645, June 9, 1988; 53 FR 27518, July 21, 1988; 54 FR 32311, Aug. 4, 1989; 55 FR 25840, June 25, 1990]

§ 303.10 Procedures for case assessment and prioritization.

(a) The IV-D agency may implement a case assessment and prioritization system Statewide or in a particular political subdivision of the State to manage its caseload. If a IV-D agency implements a case assessment and prioritization system, the IV-D agency must continue to meet the timeframes and case processing standards contained in this Part.

(b) In implementing a case assessment and prioritization system, the IV-D agency must:

(1) Develop written procedures for the evaluation and prioritization of cases upon receipt and upon becoming aware of changes in case circumstances;

(2) Include all of its cases in the system, incuding cases referred from the title the IV-A agency under § 235.70 of this title, cases in which applications for services are received under § 302.33 of this chapter, and cases referred from other States for assistance under § 302.36 of this chapter.

(3) Ensure that no service required to be provided under the IV-D State plan will be systematically excluded by the prioritization system, including locating the absent parent, establishing paternity, and establishing and enforcing support obligations.

(4) Notify all applicants for services that the information they provide, either initially or subsequently, may affect the relative priority given their cases.

(5) Prioritize cases after reviewing all intake information for accuracy and completeness and, if review indicates that additional information is needed, prioritize only after attempting to verify or secure the information in accordance with § 303.2.

(6) Establish a mechanism for the periodic review of low priority cases in accordance with the standards set forth in part 303, and for notifying the custodial parent in these cases that new information may result in a higher priority for the case.

(Approved by the Office of Management and Budget under control number 0960-0394)

[49 FR 36777, Sept. 19, 1984, as amended at 51 FR 37731, Oct. 24, 1986; 54 FR 32311, Aug. 4, 1989]

§ 303.11 Case closure criteria.

(a) The IV-D agency shall establish a system for case closure.

(b) In order to be eligible for closure, the case must meet at least one of the following criteria:

(1) In the case of a child who has reached the age of majority, there is no longer a current support order and arrearages are under $500 or unenforceable under State law;

(2) In the case of a child who has not reached the age of majority, there is no longer a current support order and arrearages are under $500 or unenforceable under State law;

(3) The absent parent or putative father is deceased and no further action, including a levy against the estate, can be taken;

(4) Paternity cannot be established because:

(i) The child is at least 18 years old and action to establish paternity is barred by a statute of limitations which meets the requirements of § 302.70(a)(5) of this chapter;

(ii) A genetic test or a court or administrative process has excluded the putative father and no other putative father can be identified; or

(iii) In accordance with § 303.5(b) of this part, the IV-D agency has determined that it would not be in the best interests of the child to establish paternity in a case involving incest or forcible rape, or in any case where legal proceedings for adoption are pending;

(5) The absent parent's location is unknown, and the State has made regular attempts using multiple sources to locate the absent parent over a three-year period, all of which have been unsuccessful;

(6) The absent parent cannot pay support for the duration of the child's minority because the parent has been institutionalized in a psychiatric facility, is incarcerated with no chance for parole, or has a medically-verified total and permanent disability with no evidence of support potential. The State must also determine that no income or assets are available to the absent parent which could be levied or attached for support;

(7) The absent parent is a citizen of, and lives in, a foreign country, does not work for the Federal government or a company with headquarters or offices in the United States, and has no reachable domestic income or assets; and the State has been unable to establish reciprocity with the country;

(8) The IV-D agency has provided location-only services as requested under § 302.35(c)(3) of this chapter;

(9) The non-AFDC custodial parent requests closure of a case and there is no assignment to the State of arrearages which accrued under a support order;

(10) There has been a finding of good cause as set forth at §§ 302.31(c) and 232.40 through 232.49 of this chapter and the State or local IV-A or IV-E agency has determined that support enforcement may not proceed without risk or harm to the child or caretaker relative;

(11) In a non-AFDC case, the IV-D agency is unable to contact the custodial parent within a 30 calendar day period despite attempts by both phone and at least one registered letter; or

(12) In a non-AFDC case, the IV-D agency documents the circumstances of the custodial parent's noncooperation and an action by the custodial parent is essential for the next step in providing IV-D services.

(c) In cases meeting the criteria in paragraphs (b) (1) through (7) and (11) and (12) of this section, the State must notify the custodial parent in writing 60 calendar days prior to closure of the case of the State's intent to close the case. The case must be kept open if the custodial parent supplies information in response to the notice which could lead to the establishment of paternity or a support order or enforcement of an order or, in the instance of paragraph (b)(11) of this section, if contact is reestablished with the custodial parent. If the case is closed, the custodial parent may request at a later date that the case be reopened if there is a change in circumstances which could lead to the establishment of paternity or a support order or enforcement of an order.

(d) The IV-D agency must retain all records for cases closed pursuant to this section for a minimum of three years, in accordance with 45 CFR Part 74, Subpart D.

[54 FR 32311, Aug. 4, 1989]

§ 303.15 Agreements to use the Federal Parent Locator Service (PLS) in parental kidnapping and child custody cases.

(a) *Definitions.* The following definitions apply to this section:

(1) *"Authorized person"* means the following:

(i) Any agent or attorney of any State having an agreement under this section, who has the duty or authority under the laws of the State to enforce a child custody determination.

(ii) Any court having jurisdiction to make or enforce a child custody determination, or any agent of the court;

(iii) Any agent or attorney of the United States, or of a State having an agreement under this section, who has the duty or authority to investigate, enforce, or bring a prosecution with respect to the unlawful taking or restraint of a child.

(2) *"Custody determination"* means a judgment, decree, or other order of a court providing for custody or visitation of a child, and includes permanent and temporary orders, and initial orders and modifications.

(b) If the State enters into an agreement with the Office that meets the requirements of section 463 of the Act and this section of the regulations, the State IV-D agency may request information from the Federal PLS for the purpose of:

(1) Enforcing any State or Federal law with respect to the unlawful taking or restraint of a child; or

(2) Making or enforcing a child custody determination.

(c) An agreement under section 463 of the Act must contain the following provisions:

(1) The Director will provide the State IV-D agency with the most recent home address and place of employment of an absent parent or child if the information is requested for the purposes specified in paragraph (b) of this section.

(2) The State shall make requests for information under the agreement only for the purposes specified in paragraph (b) of this section.

(3) The State shall make requests to the Federal PLS through the State PLS established under § 302.35 of this chapter.

(4) The State shall submit requests in the standard format and exchange media normally available to or used by the State PLS.

(5) The State shall identify requests in a manner prescribed by the Office in instructions so that requests can be distinguished from other types of requests submitted to the Federal PLS.

(6) The State shall impose, collect and account for fees to offset the costs to the State and the Office incurred in processing requests.

(7) The State shall periodically transmit the fees collected to cover the costs to the Federal PLS of processing requests. Fees shall be transmitted in the amount and in the manner prescribed by the Office in instructions.

(8) The State shall adopt policies and procedures to ensure that information shall be used and disclosed solely for the purposes specified in paragraph (b) of this section. Under this requirement, the State shall:

(i) Restrict access to the information to authorized persons whose duties or responsibilities require access in connection with child custody and parental kidnapping cases;

(ii) Store the information during nonduty hours, or when not in use, in a locked container within a secure area that is safe from access by unauthorized persons;

(iii) Process the information under the immediate supervision and control of authorized personnel, in a manner which will protect the confidentiality of the information, and in such a way that unauthorized persons cannot retrieve the information by computer, remote terminal, or other means;

(iv) Brief all employees who will have access to the data on security procedures and instructions;

(v) Send the information directly to the requestor and make no other use of the information;

(vi) After the information is sent to the requestor, destroy any confidential records and information related to the request.

(d)(1) An agreement under section 463 of the Act must be signed by the Governor of the State or the Governor's designee.

(2) The agreement must also be signed by the Attorney General of the State who must certify that the signing State official has the authority under State law to commit the State to the agreement.

[46 FR 54557, Nov. 3, 1981]

§ 303.20 Minimum organizational and staffing requirements.

(a) The organizational structure of the IV-D agency (See § 302.12) provides for administration or supervision of all the functions for which it is responsible under the State plan, is appropriate to the size and scope of the program in the State, and contains clearly established lines for administrative and supervisory authority.

(b) There is an organizational structure and sufficient staff to fulfill the following required State level functions:

(1) The establishment and administration of the State plan.

(2) Formal evaluation of the quality, efficiency, effectiveness, and scope of services provided under the plan.

(3) Coordination of activities pursuant to, and assurance of compliance with, the requirements of the State's Reciprocal Enforcement of Support Act for cases pursuant to a State plan.

(4) Requests to the DHHS Office of Child Support Enforcement for use of the Federal Parent Locator Service, the U.S. District Courts, and IRS collection procedures.

(5) Preparation and submission of reports required by the Office.

(6) Financial control of the operation of the plan.

(7) Operation of the State Parent Locator Service as required under § 302.35 of this chapter.

(c) There is an organizational structure and sufficient resources at the State and local level to meet the performance and time standards contained in this part and to provide for the administration or supervision of the following support enforcement functions:

(1) *Intake.* Activities associated with initial support case opening.

(2) *Establishing the legal obligation to support.* Activities related to determining the absent parent's legal obligation to support his or her dependent children, including paternity determination when necessary.

(3) *Locate.* Activities associated with locating an absent parent.

(4) *Financial assessment.* Activities related to determining an absent parent's ability to provide support.

(5) *Establishment of the amount of support.* Activities related to determining an absent parent's child support obligation, including methods and terms of payment.

(6) *Collection.* Activities related to monitoring payment activities and processing cash flow.

(7) *Enforcement.* Activities to enforce collection of support, including income withholding and other available enforcement techniques.

(8) *Investigation.* Activities related to investigation necessary to accomplish the functions of this paragraph.

(d) The functions referred to in paragraphs (b) (1), (2) and (6) of this section may not be delegated by the IV-D agency. The functions referred to in paragraph (b)(5) of this section may be delegated to the extent necessary to report on activities delegated by the IV-D agency.

(e) No functions under the State plan may be delegated by the IV-D agency if such functions are to be performed by caseworkers who are also performing the assistance payments or social services functions under title IV-A or XX of the Act.

In the case of a sparsely populated geographic area, upon justification by the IV-D agency documenting a lack of administrative feasibility in not utilizing staff of the IV-A agency, the Office may approve alternate arrangements that include sufficient reporting and cost allocation methods that will assure compliance with Federal requirements and proper claims for Federal financial participation. Under this provision:

(1) "Caseworker" means any person who has decision-making authority over individual cases on a day-to-day basis and includes, but is not limited to such designations as intake worker, eligibility technician, caseworker, and social worker.

(2) The "assistance payments function" means activities related to determination of eligibility for, and amount of financial assistance under the approved State plan under title I, IV-A, X, XIV, or XVI, State Supplemental income payments under title XVI of the Act, and State or local General Assistance programs. It includes the complete process of determining initial and continuing eligibility for financial and medical assistance and commodities distribution or food stamps.

(3) The "social services function" means those activities included in the approved State plan and carried out pursuant to Parts 220, 222 and 226 of this title or carried out pursuant to title XX of the Act. It includes determination of eligibility for, and delivery of services to, families and individuals under the approved State plan or under title XX of the Act.

(f) There are the following types of staff in sufficient numbers to achieve the standards for an effective program prescribed in this part:

(1) Attorneys or prosecutors to represent the agency in court or administrative proceedings with respect to the establishment and enforcement of orders of paternity and support, and

(2) Other personnel such as legal, interviewer, investigative, accounting, clerical, and other supportive staff.

(g) If it is determined as a result of an audit conducted under Part 305 of this chapter that a State is not in substantial compliance with the requirements of title IV-D of the Act, the Secretary will evaluate whether inadequate resources was a major contributing factor and, if necessary, may set resource standards for the State.

[40 FR 27164, June 26, 1975, as amended at 47 FR 57282, Dec. 23, 1982; 54 FR 32312, Aug. 4, 1989]

§ 303.21 Safeguarding information.

(a) Under State statute which imposes legal sanctions, the use or disclosure of information concerning applicants or recipients of support enforcement services is limited to purposes directly connected with:

(1) The administration of the plan or program approved under parts A, B, C or D of title IV or under titles II, X, XIV, XVI, XIX or XX or the supplemental security income program established under title XVI;

(2) Any investigations, prosecution or criminal or civil proceeding conducted in connection with the administration of any such plan or program; and

(3) The administration of any other Federal or Federally assisted program which provides assistance, in cash or in kind, or services, directly to individuals on the basis of need.

(b) These safeguards shall also prohibit disclosure to any committee or legislative body (Federal, State, or local) of any information that identifies by name or address any such applicant or recipient.

[47 FR 24719, June 8, 1982]

§ 303.30 Securing medical support information.

(a) If the IV-A or IV-E agency does not provide the information specified in this paragraph to the Medicaid agency and if the information is available or can be obtained in a IV-D case for which an assignment is in effect under § 232.11 of this title or section 471(a)(17) of the Act, the IV-D agency shall obtain the following information on the case:

(1) AFDC case number, title IV-E foster care case number, Medicaid number or the individual's social security number;

(2) Name of absent parent;

(3) Social security number of absent parent;

(4) Name and social security number of child(ren);

(5) Home address of absent parent;

(6) Name and address of absent parent's place of employment;

(7) Whether the absent parent has a health insurance policy and, if so, the policy name(s) and number(s) and name(s) of person(s) covered.

(b) When an individual applies for services under § 302.33 of this chapter, the IV-D agency shall inform the individual that medical support enforcement services are available and shall secure the information specified in paragraph (a) of this section:

(1) If the individual is a Medicaid applicant or recipient; or

(2) With the consent of the individual, if the individual is not a Medicaid applicant or recipient.

(c) The IV-D agency shall provide the information obtained under paragraphs (a) and (b)(1) of this section to the Medicaid agency in a timely manner by the most efficient and cost-effective means available, using manual or automated systems.

(Approved by the Office of Management and Budget under control number 0960-0420)

[50 FR 41895, Oct. 15, 1985, as amended at 51 FR 37732, Oct. 24, 1986. Redesignated at 54 FR 32312, Aug. 4, 1989]

§ 303.31 Securing and enforcing medical support obligations.

(a) For purposes of this section:

(1) Health insurance is considered reasonable in cost if it is employment-related or other group health insurance, regardless of service delivery mechanism.

(2) Health insurance includes fee for service, health maintenance organization, preferred provider organization, and other types of coverage under which medical services could be provided to the dependent child(ren) of an absent parent.

(b) With respect to cases for which there is an assignment in effect under § 232.11 of this title or section 471(a)(17) of the Act, the IV-D agency shall:

(1) Unless the custodial parent and child(ren) have satisfactory health insurance other than Medicaid, petition the court or administrative authority to include health insurance that is available to the absent parent at reasonable cost in new or modified court or administrative orders for support.

(2) Petition the court or administrative authority to include medical support as required under paragraph (b)(1) of this section whether or not—

(i) Health insurance at reasonable cost is actually available to the absent parent at the time the order is entered; or

(ii) Modification of current coverage to include the child(ren) in question is immediately possible.

(3) Establish written criteria to identify cases not included under paragraphs (b)(1) and (b)(2) of this section where there is a high potential for obtaining medical support based on—

(i) Evidence that health insurance may be available to the absent parent at a reasonable cost, and

(ii) Facts, as defined by State law, regulation, procedure, or other directive, which are sufficient to warrant modification of the existing support order to include health insurance coverage for a dependent child(ren).

(4) Petition the court or administrative authority to modify support orders for cases identified in paragraph (b)(3) of this section to include medical support in the form of health insurance coverage.

(5) Provide the custodial parent with information pertaining to the health insurance policy which has been secured for the dependent child(ren) pursuant to an order obtained under this section.

(6) Inform the Medicaid agency when a new or modified court or administrative order for child support includes medical support and provide the information referred to in § 306.50(a) of this part to the Medicaid agency when the information is available.

(7) If health insurance is available to the absent parent at reasonable cost and has not been obtained at the time the order is entered, take steps to enforce the health insurance coverage required by the support order and provide the Medicaid agency with the in-

formation referred to in § 306.50(a) of this part.

(8) Periodically communicate with the Medicaid agency to determine if there have been lapses in health insurance coverage for Medicaid applicants and recipients.

(9) Request employers and other groups offering health insurance coverage that is being enforced by the IV-D agency to notify the IV-D agency of lapses in coverage.

(c) The IV-D agency shall inform an individual who applies for services under § 302.33 of this chapter that medical support enforcement services are available and shall provide the services specified in paragraph (b) of this section if the individual is a Medicaid applicant or recipient. The IV-D agency shall provide the services specified in paragraph (b) of this section with the consent of the individual who applies for services and is not a Medicaid applicant or recipient, except that health insurance information shall not be transmitted to the Medicaid agency.

(Approved by the Office of Management and Budget under control number 0960-0420)

[50 FR 41895, Oct. 15, 1985, as amended at 51 FR 37732, Oct. 24, 1986; 53 FR 36021, Sept. 16, 1988. Redesignated at 54 FR 32312, Aug. 4, 1989]

§ 303.52 Pass-through of incentives to political subdivisions.

The State must calculate and promptly pay incentives to political subdivisions as follows:

(a) The State IV-D agency must develop a standard methodology for passing through an appropriate share of its incentive payment to those political subdivisions of the State that participate in the costs of the program, taking into account the efficiency and effectiveness of the activities carried out under the State plan by those political subdivisions. In order to reward efficiency and effectiveness, the methodology also may provide for payment of incentives to other political subdivisions of the State that administer the program.

(b) To ensure that the standard methodology developed by the State reflects local participation, the State IV-D agency must submit a draft methodology to participating political subdivisions for review and comment or use the rulemaking process available under State law to receive local input.

[54 FR 32312, Aug. 4, 1989]

§ 303.69 Requests by agents or attorneys of the United States for information from the Federal Parent Locator Service (PLS).

(a) Agents or attorneys of the United States may request information directly from the Federal PLS in connection with a parental kidnapping or child custody case. (See § 303.15(a) of this part for a definition of persons authorized to request the information.)

(b) All requests under this section shall be made in the manner and form prescribed by the Office.

(c) All requests under this section shall contain the information specified in § 303.70(c) of this part.

(d) All requests under this section shall be accompanied by a statement, signed by the agent or attorney of the United States, attesting to the following:

(1) The request is being made solely to locate an individual in connection with a parental kidnapping or child custody case.

(2) Any information obtained through the Federal PLS shall be treated as confidential, shall be used solely for the purpose for which it was obtained and shall be safeguarded.

(e) A fee may be charged to cover the costs of processing requests for information. A separate fee may be charged to cover costs of searching for a social security number before processing a request for location information.

(Approved by the Office of Management and Budget under control number 0960-0258)

[48 FR 38645, Aug. 25, 1983, as amended at 51 FR 37731, Oct. 24, 1986]

§ 303.70 Requests by the State parent locator service for information from the Federal Parent Locator Service (PLS).

(a) Only the central State PLS office, and any additional IV-D offices designated under § 302.35(b), may submit requests for information to the Federal PLS.

(b) All requests shall be made in the manner and form prescribed by the Office.

(c) All requests shall contain the following information:

(1) The absent parent's name;

(2) The absent parent's social security number (SSN). If the SSN is unknown, the IV-D agency must make every reasonable effort to ascertain the individual's SSN before submitting the request to the Federal PLS;

(3) Whether the individual is or has been a member of the armed services, if known;

(4) Whether the individual is receiving, or has received, any Federal compensation or benefits, if known; and

(5) Any other information prescribed by the Office.

(d) All requests shall be accompanied by a statement, signed by the director of the IV-D agency or his or her designee, attesting to the following:

(1) The request is being made solely to locate an individual for the purpose of establishing paternity or securing support or in connection with a parental kidnapping or child custody case.

(2) Any information obtained through the Federal PLS shall be treated as confidential and shall be safeguarded under the requirements of § 303.21 of this chapter and instructions issued by the Office.

(e)(1) The IV-D agency shall pay the fees required under sections 453(e)(2) and 454(17) of the Act.

(2) The IV-D agency shall charge the resident parent, attorney or agent of a child who is not receiving aid under title IV-A of the Act the fee required under section 453(e)(2) of the Act.

(3) The IV-D agency may charge an individual requesting information or pay without charging the individual the fee required under section 454(17) of the Act.

(4) The fees required under sections 453(e)(2) and 454(17) of the Act shall be reasonable and as close to actual costs as possible so as not to discourage use of Federal PLS services by authorized individuals.

(5) For processing requests on behalf of the resident parent, legal guardian, attorney or agent of the child who is not receiving aid under title IV-A of the Act (see 45 CFR 302.35(c)(3)), the Office will collect the fees from the IV-D agency by an offset of the State's quarterly grant award.

(6)(i) For costs of processing requests on behalf of persons authorized to receive information in parental kidnapping and child custody cases, the Federal government will bill the IV-D agency periodically. A separate fee will be charged to cover costs of searching for a social security number before processing a request for location information.

(ii) The IV-D agency shall transmit payment to the Federal government upon receipt of a bill. If a State fails to pay the appropriate fees charged by the Office, this will result in termination of the services provided under section 463 of the Act.

(iii) Fees shall be transmitted in the amount and manner prescribed by the Office in instructions.

(Approved by the Office of Management and Budget under control number 0960-0165)

[46 FR 54557, Nov. 3, 1981, as amended at 47 FR 24719, June 8, 1982; 47 FR 57282, Dec. 23, 1982; 48 FR 38645, Aug. 25, 1983; 51 FR 37731, Oct. 24, 1986]

§ 303.71 Requests for full collection services by the Secretary of the Treasury.

(a) *Definition.* "State collection mechanisms" means a comprehensive set of written procedures developed and used to maximize effective collection action within the State.

(b) *Families eligible.* Subject to the criteria and procedures in this section, the IV-D agency may request the Secretary to certify the amount of a child support obligation to the Secretary of the Treasury for collection under section 6305 of the Internal Revenue Code of 1954. Requests may be made on behalf of families receiving AFDC who make assignments under 45 CFR 232.11, and on behalf of families not receiving AFDC who apply under § 302.33.

(c) *Cases eligible.* For a case to be eligible for certification to the Secretary of the Treasury:

(1) There shall be a court or administrative order for support;

(2) The amount to be collected under the support order shall be at least $750 in arrears;

(3) At least six months shall have elapsed since the last request for referral of the case to the Secretary of the Treasury;

(4) The IV-D agency, the client, or the client's representative shall have made reasonable efforts to collect the support through the State's own collection mechanisms. The agency need not repeat actions taken by the client or client's representative that the agency determines to be comparable to the State's collection mechanisms.

(5) Only the State that has taken an assignment under 45 CFR 232.11 or an application under 45 CFR 302.33 may request IRS collection services on behalf of a given case.

(d) *Procedures for submitting requests.* (1) The IV-D agency shall submit requests for certification to the regional office in the manner and form prescribed by the Office.

(2) The Director of the State IV-D agency (or designee) shall sign requests for collection by the Secretary of the Treasury.

(e) *Criteria for acceptable requests.* The IV-D agency shall ensure that each request contains:

(1) Sufficient information to identify the debtor, including:

(i) The individual's name;

(ii) The individual's social security number;

(iii) The individual's address and place of employment, including the source of this information and the date it was last verified.

(2) A copy of all court or administrative orders for support;

(3)(i) The amount owed under the support orders;

(ii) A statement of whether the amount is in lieu of, or in addition to, amounts previously referred to IRS for collection;

(4)(i) A statement that the agency, the client, or the client's representative has made reasonable efforts to collect the amount owed using the State's own collection mechanisms or mechanisms that are comparable;

(ii) A description of the actions taken, why they failed, and why further State action would be unproductive;

(5) The dates of any previous requests for referral of the case to the Secretary of the Treasury;

(6) A statement that the agency agrees to reimburse the Secretary of the Treasury for the costs of collection; and

(7)(i) A statement that the agency has reason to believe that the debtor has assets that the Secretary of the Treasury might levy to collect the support; and

(ii) A statement of the nature and location of the assets, if known.

(f) *Review of requests by the Office.* (1) The Regional Representative will review each request to determine whether it meets the requirements of this section.

(2) If a request meets all requirements, the Regional Representative will promptly certify and transmit the request with a copy of all supporting documentation to the Secretary of the Treasury. At the same time, the Regional Representative will notify the IV-D agency in writing of the transmittal.

(3)(i) If a request does not meet all requirements, the Regional Representative will attempt to correct the request in consulation with the IV-D agency.

(ii) If the request cannot be corrected through consultation, the Regional Representative will return it to the agency with an explanation of why the request was not certified.

(g) *Notification of changes in case status.* (1) The IV-D agency shall immediately notify the Regional Representative of the following changes in case status:

(i) A change in the amount due;

(ii) A change in the nature or location of assets;

(iii) A change in the address of the debtor.

(2) The Regional Representative will transmit the revised information to the Secretary of the Treasury.

(Approved by the Office of Management and Budget under control number 0960-0281)

[47 FR 16030, Apr. 14, 1982; 48 FR 7179, Feb. 18, 1983, as amended at 51 FR 37731, Oct. 24, 1986]

§ 303.72 Requests for collection of past-due support by Federal tax refund offset.

(a) *Past-due support qualifying for offset.* Past-due support as defined in § 301.1 of this chapter qualifies for offset if:

(1) There has been an assignment of the support rights under § 232.11 of this title or section 471(a)(17) of the Act to the State making the request for offset or an application for IV-D services filed with the IV-D agency under § 302.33 of this chapter.

(2) For support which has been assigned to the State under § 232.11 of this title or section 471(a) (17) of the Act:

(i) The amount of the support is not less than $150; and

(ii) The support has been delinquent for three months or longer.

(3) For support owed in cases where an application for IV-D services is filed with the IV-D agency pursuant to § 302.33 of this chapter:

(i) The support is owed to or on behalf of a minor child;

(ii) The amount of support is not less than $500;

(iii) At State option, the amount has accrued since the State IV-D agency began to enforce the support order; and

(iv) The State has checked its records to determine if an AFDC or foster care maintenance assigned arrearage exists with respect to the non-AFDC individual or family.

(4) The IV-D agency has in its records:

(i) A copy of the order and any modifications upon which the amount referred is based which specify the date of issuance and amount of support;

(ii) A copy of the payment record, or, if there is no payment record, an affidavit signed by the custodial parent attesting to the amount of support owed; and

(iii) In non-AFDC cases, the custodial parent's current address.

(5) Before submittal, the State IV-D agency has verified the accuracy of the name and social security number of the absent parent and the accuracy of the past-due support amount. If the State IV-D agency has verified this information previously, it need not reverify it.

(6) A notification of liability for past-due support has been received by the Secretary of the Treasury as prescribed by paragraph (c)(2) of this section.

(b) *Notification to OCSE of liability for past-due support.* (1) A State IV-D agency shall submit a notification (or notifications) of liability for past-due support on a magnetic tape to the Office by the submittal date specified by the Office in instructions.

(2) The notification of liability for past-due support shall contain with respect to each delinquency:

(i) The name of the taxpayer who owes the past-due support;

(ii) The social security number of that taxpayer;

(iii) The amount of past-due support owed;

(iv) The State codes as contained in the Federal Information Processing Standards (FIPS) publication of the National Bureau of Standards and also promulgated by the General Services Administration in Worldwide Geographical Location Codes; and

(v) Whether the past-due support is due an individual who applied for services under § 302.33 of this chapter.

(3) The notification of liability for past-due support may contain with respect to each delinquency the taxpayer's IV-D case number and FIPS code for the local IV-D agency where the case originated.

(c) *Review of requests by the Office.* (1) The Deputy Director will review each request to determine whether it meets the requirements of this section.

(2) If a request meets all requirements, the Deputy Director will transmit the request to the Secretary of the Treasury and will notify the State IV-D agency in writing of the transmittal.

(3) If a request does not meet all requirements, the Deputy Director will attempt to correct the request in consultation with the State IV-D agency

(4) If a request cannot be corrected through consultation, the Deputy Director will return it to the State IV-D agency with a written explanation of why the request could not be transmitted to the Secretary of the Treasury.

(d) *Notification of changes in case status.* (1) The State referring past-due support of offset must, in interstate situations, notify any other State involved in enforcing the support order when it submits an interstate case for offset and when it receives the offset amount from the IRS.

(2) The State IV-D agency shall within time frames established by the Office in instructions, notify the Deputy Director in writing of any deletion of an amount referred for collection by Federal tax refund offset or any decrease in the amount if the decrease is significant according to guidelines developed by the State. The notification shall contain the information specified in paragraph (b) of this section.

(e) *Notices of offset*—(1) *Advance.* The State IV-D agency, or the Office, if the State requests and the Office agrees, shall send a written advance notice to inform an absent parent that the amount of his or her past-due support will be referred to the IRS for collection by Federal tax refund offset. The notice must inform absent parents:

(i) Of their right to contest the State's determination that past-due support is owed or the amount of past-due support;

(ii) Of their right to an administrative review by the submitting State or at the absent parent's request the State with the order upon which the referral for offset is based;

(iii) Of the procedures and time-frame for contacting the IV-D agency in the submitting State to request administrative review; and

(iv) That, in the case of a joint return, the IRS will notify the absent parent's spouse at the time of offset regarding the steps to take to protect the share of the refund which may be payable to that spouse. If the IV-D agency sends the notice, it must meet the conditions specified by the Office in instructions.

(2) *At offset.* The IRS will notify the absent parent that the offset has been made. The IRS will also notify any individual who filed a joint return with the absent parent of the steps to take in order to secure a proper share of the refund.

(f) *Procedures for contesting in intrastate cases.* (1) Upon receipt of a complaint from an absent parent in response to the advance notice required in paragraph (e)(1) of this section or concerning a tax refund which has already been offset, the IV-D agency must send a notice to the absent parent and, in non-AFDC cases the custodial parent, of the time and place of the administrative review of the complaint and conduct the review to determine the validity of the complaint.

(2) If the complaint concerns a joint tax refund that has not yet been offset, the IV-D agency must inform the absent parent that the IRS will notify the absent parent's spouse at the time of offset regarding the steps to take to secure his or her proper share of the refund. If the complaint concerns a joint tax refund which has already been offset, the IV-D agency must refer the absent parent to the IRS.

(3) If the administrative review results in a deletion of, or decrease in, the amount referred for offset, the IV-D agency must notify OCSE in writing within time frames established by the Office and include the information specified in paragraph (b) of this section.

(4) If, as a result of the administrative review, an amount which has already been offset is found to have exceeded the amount of past-due support owed, the IV-D agency must take steps to refund the excess amount to the absent parent promptly.

(g) *Procedures for contesting in interstate cases.* (1) If the absent parent requests an administrative review in the submitting State, the IV-D agency must meet the requirements in paragraph (f) of this section.

(2) If the complaint cannot be resolved by the submitting State and the absent parent requests an administrative review in the State with the order upon which the referral for offset is

based, the submitting State must notify the State with the order of the request for an administrative review and provide that State with all necessary information, including the information listed under paragraph (a)(4) of this section, within 10 days of the absent parent's request for an administrative review.

(3) The State with the order must send a notice to the absent parent and, in non-AFDC cases the custodial parent, of the time and place of the administrative review, conduct the review and make a decision within 45 days of receipt of the notice and information from the submitting State.

(4) If the administrative review results in a deletion of, or decrease in, the amount referred for offset, the State with the order must notify the Office in writing within time frames established by the Office and include the information specified in paragraph (b) of this section.

(5) Upon resolution of a complaint after an offset has been made, the State with the order must notify the submitting State of its decision promptly.

(6) When an administrative review is conducted in the State with the order, the submitting State is bound by the decision made by the State with the order.

(7) Based on the decision of the State with the order, the IV-D agency in the submitting State must take steps to refund any excess amount to the absent parent promptly.

(8) In computing incentives under § 304.12 of this part, if the case is referred to the State with the order for an administrative review, the collections made as a result of Federal tax refund offset will be treated as having been collected in full by both the submitting State and the State with the order.

(h) *Distribution of collections.* (1) Collections received by the IV-D agency as a result of refund offset to satisfy AFDC or non-AFDC past-due support shall be distributed as past-due support as required under § 302.51(b) (4) and (5) of this chapter.

(2) Collections received by the IV-D agency in foster care maintenance cases shall be distributed as past-due support under § 302.52(b) (3) and (4) of this chapter.

(3) The IV-D agency must inform individuals who apply for services under § 302.33 of this chapter in advance that amounts offset will be applied first to satisfy any past-due support which has been assigned to the State under §232.11 of this title or section 471(a)(17) of the Act and submitted for Federal tax refund offset.

(4) If the amount collected is in excess of the amounts required to be distributed under §§ 302.51(b) (4) and (5) or 302.52(b) (3) and (4) of this chapter, the IV-D agency must repay the excess to the absent parent whose refund was offset or jointly to the parties filing a joint return within a reasonable period in accordance with State law.

(5) In cases where the Secretary of the Treasury, through OCSE notifies the State that an offset is being made to satisfy non-AFDC past-due support from a refund based on a joint return, the State may delay distribution until notified that the unobligated spouse's proper share of the refund has been paid or for a period not to exceed six months from notification of offset, whichever is earlier.

(6) Collections from offset may be applied only against the past-due support which was specified in the advance notice described in paragraph (e)(1) of this section.

(i) *Payment of fee.* (1) A refund offset fee, in such amount as the Secretary of the Treasury and the Secretary of Health and Human Services have agreed to be sufficient to reimburse the IRS for the full cost of the offset procedure, shall be deducted from the offset amount and credited to the IRS appropriations which bore all or part of the costs involved in making the collection. The full amount offset must be credited against the obligor's payment record. The fee which the Secretary of the Treasury may impose with respect to non-AFDC submittals shall not exceed $25 per submittal.

(2) The State IV-D agency may charge an individual who applies for services under § 302.33 of this chapter a fee not to exceed $25 for submitting past-due support for Federal tax

refund offset. The State must inform the individual in advance of the amount of any fee charged.

(3) Any State which requests the Office to send the advance written notice under paragraph (e)(1) of this section will be charged a fee, in an amount established by the Office in instructions, for printing and mailing of pre-offset notices. This fee shall be credited to the Health and Human Services appropriations which bore all or part of the costs involved in making the collection.

(j) Each State involved in a referral of past-due support for offset must comply with instructions issued by the Office.

(k) *Limitation of referral for offset of non-AFDC past-due support.* Offset of Federal income tax refunds to satisfy past-due support in non-AFDC cases is limited to refunds payable under section 6402 of the Internal Revenue Code of 1954 after December 31, 1985, and before January 1, 1991.

(Approved by the Office of Management and Budget under control number 0960-0385)

[50 FR 19651, May 9, 1985; 50 FR 31719, Aug. 6, 1985, as amended at 51 FR 37731, Oct. 24, 1986; 53 FR 47710, Nov. 25, 1988; 54 FR 32312, Aug. 4, 1989]

§ 303.73 Applications to use the courts of the United States to enforce court orders.

(a) The IV-D agency may apply to the Secretary for permission to use a United States district court to enforce a support order of a court of competent jurisdiction against an absent parent who is present in another State if the IV-D agency can furnish evidence to demonstrate that:

(1) The State in which the absent parent is present has not undertaken to enforce the order against the parent within 60 days of the receipt of a request by the originating State under uniform reciprocal enforcement of support procedures or other legal processes required by § 303.7; and

(2) Use of the United States district court is the only reasonable method of enforcing the order.

(b) The applications shall be submitted to the Regional Office, using the forms prescribed, signed by the head of the IV-D agency or his designee, attesting to the following:

(1) The requesting IV-D agency has undertaken to obtain the assistance of the other State to enforce the order;

(2) The other State has failed to secure compliance with the order:

(3) The requesting IV-D agency has provided notice to the State-level central office of the IV-D agency of the other State 60 days or more after requesting the other State's assistance that it would request the Secretary to certify the case for use of a United States district court if the other State did not respond to the request for assistance within 30 days of the notice, and that an unsatisfactory response would not preclude a request to the Secretary. Copies of the original request, the notice, and any response thereto shall be furnished with the application.

(c) The Regional Office will review each application to determine if it meets the requirements of paragraphs (a) and (b) of this section. If a request meets these requirements, the case will promptly be certified for enforcement in the United States district court. If the request fails to meet these requirements, the application shall be denied and returned to the IV-D agency with an explanation of the refusal to certify.

[47 FR 24719, June 8, 1982, as amended at 54 FR 32312, Aug. 4, 1989]

§ 303.80 Recovery of direct payments.

(a) *Definition.* "Direct payment" means an assigned support payment from an absent parent which is received directly by an AFDC recipient.

(b) *Direct payments that must be recovered by the IV-D agency.* In States that place the responsibility for recovery of direct payments with the IV-D agency under the State plan option at § 302.31(a)(3)(ii) of this chapter, the IV-D agency must recover all such payments. The only exception is a direct payment retained by the recipient during the period when the sanction for failure to cooperate is in effect, as provided at 45 CFR 232.12(d).

(c) *What the IV-D agency must do prior to establishing a repayment* *agreement with an AFDC recipient.* Before establishing a repayment agreement with an AFDC recipient, the IV-D agency must:

(1) Document that the recipient has, in fact, received and retained direct payments, and the amounts;

(2) Provide written notice of intent to recover the payments to the recipient that includes the following:

(i) An explanation of the recipient's responsibility to cooperate by turning over direct payments as a condition of eligibility for AFDC, and the sanction for failure to cooperate as provided at § 232.12(d) of this title;

(ii) A detailed list of the direct payments which have been retained by the recipient, as documented by the IV-D agency, including the dates and amounts of these payments as well as a description of any documentary evidence (such as photocopies of the checks) which the IV-D agency possesses;

(iii) A proposal for a repayment plan between the recipient and the IV-D agency;

(iv) An explanation that repaying retained direct payments to the IV-D agency according to a signed repayment plan which meets the conditions of paragraph (d) below is a condition of cooperation under § 232.12(b)(4) of this title.

(3) Provide the recipient with an opportunity for an informal meeting to clarify the recipient's responsibilities and to resolve any differences regarding repayment of the directly received support by the recipient.

(d) *Requirements of the repayment agreement.* The repayment agreement between the IV-D agency and the recipient who has received and retained direct payments must be reasonably related to:

(1) The recipient's income and resources including the AFDC grant; and

(2) The total amount of retained support.

(e) *Referrals to the IV-A agency for a determination of failure to cooperate.* The IV-D agency must refer a case to the IV-A agency with evidence of failure to cooperate if:

(1) The recipient refuses to sign a repayment agreement; or

(2) The recipient enters into a repayment agreement but subsequently fails to make a payment under the terms of the agreement.

(f) *Subsequent notification to the IV-A agency as required.* If the IV-D agency has referred a case to the IV-A agency with evidence of failure to cooperate for either of the reasons in paragraph (e) of this section the IV-D agency must notify the IV-A agency when either of the following changes in circumstances occurs:

(1) The recipient who refused to enter into a repayment agreement consents to do so and signs the agreement; or

(2) The recipient who defaulted on an agreement begins making regularly scheduled payments according to the agreement. Under this paragraph, a regularly scheduled payment is a payment made in the current month for the amount specified in the initial repayment agreement between the IV-D agency and the recipient. The resumption of regularly scheduled payments cannot be interpreted to mean payment of amounts which were not paid during the period of default, nor amounts which could be categorized as balloon payments or which would be due as a result of an acceleration clause. To recover amounts due from any period of default, the IV-D agency must extend the duration of the repayment agreement.

[47 FR 43956, Oct. 5, 1982, as amended at 50 FR 34696, Aug. 27, 1985]

§ 303.100 Procedures for wage or income withholding.

(a) *Withholding requirement.* (1) The State must ensure that in the case of each absent parent against whom a support order is or has been issued or modified in the State, and is being enforced under the State plan, so much of his or her wages must be withheld, in accordance with this section, as is necessary to comply with the order.

(2) In addition to the amount to be withheld to pay the current month's obligation, the amount to be withheld must include an amount to be applied toward liquidation of overdue support.

(3) The total amount to be withheld under paragraphs (a)(1), (a)(2) and, if applicable, (d)(1)(iii) of this section may not exceed the maximum amount permitted under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. 1673(b)).

(4) In the case of a support order being enforced under the State plan, the withholding must occur without the need for any amendment to the support order involved or any further action by the court or entity that issued it. The State must take steps to implement the withholding and to send the advance notice required under paragraph (b) of this section on the earliest of: (i) the date on which the parent fails to make payments in an amount equal to the support payable for one month, (ii) such earlier date that is in accordance with State law, or (iii) the date on which the absent parent requests withholding.

(5) The only basis for contesting a withholding under this section is a mistake of fact, which for purposes of this section means an error in the amount of current or overdue support or the identity of the alleged absent parent.

(6) If there is more than one notice for withholding against a single absent parent, the State must allocate amounts available for withholding giving priority to current support up to the limits imposed under section 303(b) of the Consumer Credit Corporation Act (15 U.S.C. 1673(b)).

(7) The withholding must be carried out in full compliance with all procedural due process requirements of the State.

(8) Payment of overdue support upon receipt of the notice required under paragraph (b) of this section may not be the sole basis for not implementing withholding.

(9) The State must have procedures for promptly terminating the withholding, but in no case should payment of overdue support be the sole basis for termination of withholding.

(10) The State must have procedures for promptly refunding to absent parents amounts which have been improperly withheld.

(b) *Advance notice to absent parent.* (1) On the date the absent parent fails to make payments in an amount equal to the support payable for one month, the State must take steps to send advance notice to the absent parent regarding the delinquency of support payments and the potential withholding. The notice must inform the absent parent:

(i) Of the amount of overdue support that is owed and the amount of wages that will be withheld;

(ii) That the provision for withholding applies to any current or subsequnet employer or period of employment;

(iii) Of the procedures available for contesting the withholding and that the only basis for contesting the withholding is a mistake of fact;

(iv) Of the period within which the absent parent must contact the State in order to contest the withholding and that failure to contact the State within the specified time limit will result in the State notifying the employer to begin withholding; and

(v) Of the actions the State will take if the individual contests the withholding, including the procedures established under paragraph (c) of this section.

(2)(i) The requirements for advance notice to the absent parent under paragraph (b)(1) of this section and for State procedures when the absent parent contests withholding in response to the advance notice under paragraph (c) of this section do not apply in the case of any State which has a withholding system in effect on August 16, 1984 if the system provides on that date, and continues to provide, any other procedures as may be necessary to meet the procedural due process requirements of State law.

(ii) Any State in which paragraph (b)(2)(i) of this section applies must take steps to send notice to the employer under paragraph (d) of this section on the date on which the absent parent fails to make payments in an amount equal to the support payable for one month and must meet all other requirements of this section.

(c) *State procedures when the absent parent contests withholding in response to the advance notice.* The State must establish procedures for use when an absent parent contests the withholding. Within 45 days of advance notice to the absent parent under paragraph (b) of this section, the State must:

(1) Provide the absent parent an opportunity to present his or her case to the State;

(2) Determine if the withholding shall occur based on an evaluation of the facts, including the absent parent's statement of his or her case;

(3) Notify the absent parent whether or not the withholding is to occur and if it is to occur, include in the notice the time frames within which the withholding will begin and the information given to the employer in the notice required under paragraph (d) of this section; and

(4) If withholding is to occur, send the notice required under paragraph (d) of this section.

(d) *Notice to the employer.* (1) To initiate withholding, the State must send the absent parent's employer a notice which includes the following:

(i) The amount to be withheld from the absent parent's wages, and a statement that the amount actually withheld for support and other purposes, including the fee specified under paragraph (d)(1)(iii) of this section, may not be in excess of the maximum amounts permitted under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. 1673(b));

(ii) That the employer must send the amount to the State within 10 days of the date the absent parent is paid, unless the State directs that payment be made to another individual or entity;

(iii) That, in addition to the amount withheld under paragraph (d)(1)(i) of this section, the employer may deduct a fee established by the State for administrative costs incurred for each withholding, if the State permits a fee to be deducted;

(iv) That withholding is binding upon the employer until further notice by the State;

(v) That the employer is subject to a fine to be determined under State law for discharging an absent parent from employment, refusing to employ, or taking disciplinary action against any absent parent because of the withholding.

(vi) That if the employer fails to withhold wages in accordance with the provisions of the notice, the employer is liable for the accumulated amount the employer should have withheld from the absent parent's wages;

(vii) That the withholding under this section shall have priority over any other legal process under State law against the same wages;

(viii) That the employer may combine withheld amounts from absent parents' wages in a single payment to each appropriate agency requesting withholding and separately identify the portion of the single payment which is attributable to each individual absent parent;

(ix) That the employer must implement withholding no later than the first pay period that occurs after 14 days following the date the notice was mailed; and

(x) That the employer must notify the State promptly when the absent parent terminates employment and provide the absent parent's last known address and the name and address of the absent parent's new employer, if known.

(2) If the absent parent fails to contact the State to contest withholding within the period specified in the advance notice in accordance with (b)(1)(iv) of this section, the State must within 5 working days send the notice to the employer required under paragraph (d)(1) of this section.

(3) If the absent parent changes employment within the State when a withholding is in effect, the State must notify the absent parent's new employer in accordance with the requirements of paragraph (d)(1) of this section that the withholding is binding on the new employer.

(e) *Administration of wage withholding procedures.* (1) The State must designate a public agency to administer wage withholding in accordance with procedures specified by the State for keeping adequate records to document, track, and monitor support payments. The State may designate public or private entities to administer withholding on a State or local basis under the supervision of the State withholding agency if the entity or entities are publicly accountable and follow the procedures specified by the State. The State may designate only one entity to administer withholding in each jurisdiction.

(2) Amounts withheld must be distributed in accordance with section 457 of the Act and §§ 302.33, 302.51 and 302.52 of this chapter.

(3) The State must reduce its IV-D expenditures by any interest earned by the State's designee on withheld amounts.

(f) *Income withholding.* The State may extend its system of withholding to include withholding from forms of income other than wages.

(g) *Interstate withholding.* (1) The State law must provide for procedures to extend the State's withholding system so that the system will include withholding from income or wages derived within the State in cases where the applicable support orders were issued in other States.

(2) The State law must require employers to comply with a withholding notice issued by the State.

(3) When withholding is required in a particular case, the State in which the custodial parent applied for IV-D services must promptly notify the IV-D agency of the State in which the absent parent is employed to implement interstate withholding. The notice must contain all information necessary to carry out the withholding, including the amount requested to be withheld, a copy of the support order and a statement of arrearages. If necessary, the State where the support order is entered must promptly provide the information necessary to carry out the withholding when requested by the State where the custodial parent applied for services.

(4) Withholding must be implemented promptly by the State in which the absent parent is employed upon receipt of the notice required in paragraph (g)(3) of this section.

(5) The State in which the absent parent is employed must:

(i) Provide notice to the absent parent in accordance with the requirements in paragraph (b) of this section;

(ii) Provide the absent parent with an opportunity to contest the withholding in accordance with paragraph (c) of this section; and

(iii) Provide notice to the employer in accordance with the requirements of paragraph (d) of this section; and

(iv) Notify the State in which the custodial parent applied for services when the absent parent terminates employment within the State and provide the name and address of the absent parent and new employer, if known.

(6) The withholding must be carried out in full compliance with all procedural due process requirements of the State in which the absent parent is employed.

(7) Except with respect to when withholding must be implemented which is controlled by the State where the support order was entered, the law and procedures of the State in which the absent parent is employed shall apply.

(h) *Provision for withholding in new or modified child support orders.* Child support orders issued or modified in the State must have a provision for withholding of wages, in order to ensure that withholding as a means of support is available if arrearages occur without the necessity of filing an application for IV-D services. This requirement does not alter the requirement governing all IV-D cases in paragraph (a)(4) of this section that enforcement under the State plan must proceed without the need for a withholding provision in the order.

(Approved by the Office of Management and Budget under control number 0960-0385)

[50 FR 19653, May 9, 1985; 50 FR 23958, June 7, 1985; 50 FR 31720, Aug. 6, 1985, as amended at 51 FR 37731, Oct. 24, 1986; 54 FR 32312, Aug. 4, 1989]

§ 303.101 Expedited processes.

(a) *Definition.* "Expedited processes" means administrative or expedited judicial processes or both which increases effectiveness and meet processing times specified in paragraph (b)(2) of this section and under which the presiding officer is not a judge of the court.

(b) *Basic requirement.* (1) The State must have in effect and use expedited processes as specified under this section to establish and enforce support orders in intrastate and interstate cases.

(2) Under expedited processes, actions to establish or enforce support obligations in IV-D cases must be completed from the time of successful service of process to the time of disposition within the following time frames: (i) 90 percent in 3 months; (ii) 98 percent in 6 months; and (iii) 100 percent in 12 months.

(3) The State may include paternity establishment in the expedited processes in effect in the State.

(4) If a case involves complex issues requiring judicial resolution, the State must establish a temporary support obligation under expedited processes and may then refer the unresolved issues to the full judicial system for resolution.

(c) *Safeguards.* Under expedited processes:

(1) Orders established must have the same force and effect under State law as orders established by full judicial process within the State

(2) The due process rights of the parties involved must be protected;

(3) The parties must be provided a copy of the order;

(4) There must be written procedures for ensuring the qualification of presiding officers;

(5) Recommendations of presiding officers may be ratified by a judge; and

(6) Action taken may be reviewed under the State's generally applicable judicial procedures.

(d) *Functions.* The functions performed by presiding officers under expedited processes must include at minimum:

(1) Taking testimony and establishing a record;

(2) Evaluating evidence and making recommendations or decisions to establish and enforce orders;

(3) Accepting voluntary acknowledgement of support liability and stipulated agreements setting the amount of support to be paid and, if the State establishes paternity using expedited processes, accepting voluntary acknowledgement of paternity; and

(4) Entering default orders if the absent parents does not respond to notice or other State process within a reasonable period of time specified by the State.

(e) *Exemption for political subdivisions.* A State may request an exemption from the requirements of this section for a political subdivision on the basis of the effectiveness and timeliness of support order issuance and enforcement within the political subdivision, in accordance with the provisions of § 302.70(d) of this chapter.

(Approved by the Office of Management and Budget under control number 0960-0385)

[50 FR 19655, May 9, 1985; 50 FR 23958, June 7, 1985, as amended at 51 FR 37731, Oct. 24, 1986; 54 FR 32312, Aug. 4, 1989]

§ 303.102 Collection of overdue support by State income tax refund offset.

(a) *Overdue support qualifying for offset.* Overdue support qualifies for State income tax refund offset if:

(1) There has been an assignment of the support obligation under § 232.11 of this title or section 471(a)(17) of the Act to the State making the request for offset or an application for IV-D services filed with the IV-D agency under § 302.33 of this chapter, and

(2) The State does not determine using guidelines it must develop which are generally available to the public that the case is inappropriate for application of this procedure.

(b) *Accuracy of amounts referred for offset.* The IV-D agency must establish procedures to ensure that:

(1) Amounts referred for offset have been verified and are accurate; and

(2) The appropriate State office or agency is notified of any significant reductions in (including an elimination of) an amount referred for collection by State income tax refund offset.

(c) *Notice to custodial parent in non-AFDC cases.* In non-AFDC cases the State must inform the non-AFDC custodial parent in advance if it will first use any offset amount to satisfy any unreimbursed AFDC and foster care maintenance payments which have been provided to the family.

(d) *Advance notice to absent parent.* The State must send a written advance notice to inform the absent parent of the referral for State income tax refund offset and of the opportunity to contest the referral.

(e) *Procedures for contesting offset and for reimbursing excess amounts offset.* (1) The State must establish procedures, which are in full compliance with the State's procedural due process requirements, for an absent parent to use to contest the referral of overdue support for State income tax refund offset.

(2) If the offset amount is found to be in error or to exceed the amount of overdue support, the State IV-D agency must take steps to refund the excess amount in accordance with procedures that include a mechanism for promptly reimbursing the absent parent.

(3) The State must establish procedures for ensuring that in the event of a joint return, the absent parent's spouse can apply for a share of the refund, if appropriate, in accordance with State law.

(f) *Fee for non-AFDC cases.* In non-AFDC cases, the State may charge a reasonable fee to cover the cost of collecting overdue support using State tax refund offset.

(g) *Distribution of collections.* (1) A State must distribute collections received as a result of State income tax refund offset: (i) for an AFDC case under § 302.51(b) (4) and (5) of this chapter, (ii) for a foster care maintenance case under § 302.52(b) (3) and (4) of this chapter; and (iii) for a non-AFDC case, by paying offset amounts to the family first or using them first to reimburse the State, depending on the State's method for distributing arrearage collections in non-AFDC cases.

(2) If the amount collected is in excess of the amounts required to be distributed under paragraph (g)(1) of this section, the IV-D agency must repay the excess to the absent parent whose State income tax refund was offset within a reasonable period in accordance with State law.

(3) The State must credit amounts offset on individual payment records.

(h) *Information to the IV-D agency.* The State agency responsible for processing the State tax refund offset must notify the State IV-D agency of the absent parent's home address and social security number or numbers. The State IV-D agency must provide this information to any other State involved in enforcing the support order.

(Approved by the Office of Management and Budget under control number 0960-0385)

[50 FR 19655, May 9, 1985; 50 FR 31720, Aug. 6, 1985, as amended at 51 FR 37731, Oct. 24, 1986; 54 FR 32312, Aug. 4, 1989]

§ 303.103 Procedures for the imposition of liens against real and personal property.

(a) The State shall have in effect and use procedures which require that a lien will be imposed against the real and personal property of an absent parent who owes overdue support and who resides or owns property in the State.

(b) The State must develop guidelines which are generally available to the public to determine whether the case is inappropriate for application of this procedure.

(Approved by the Office of Management and Budget under control number 0960-0385)

[50 FR 19656, May 9, 1985, as amended at 51 FR 37731, Oct. 24, 1986]

§ 303.104 Procedures for posting security, bond or guarantee to secure payment of overdue support.

(a) The State shall have in effect and use procedures which require that absent parents post security, bond or give some other guarantee to secure payment of overdue support.

(b) The State must provide advance notice to the absent parent regarding the delinquency of the support payment and the requirement of posting security, bond or guarantee, and inform the absent parent of his or her rights and the methods available for contesting the impending action, in full compliance with the State's procedural due process requirements.

(c) The State must develop guidelines which are generally available to the public to determine whether the case is inappropriate for application of this procedure.

(Approved by the Office of Management and Budget under control number 0960-0385)

[50 FR 19656, May 9, 1985, as amended at 51 FR 37731, Oct. 24, 1986]

§ 303.105 Procedures for making information available to consumer reporting agencies.

(a) "Consumer reporting agency" means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

(b) For cases in which the amount overdue support exceeds $1,000, the IV-D agency must have in effect procedures to make information available to consumer reporting agencies upon their request regarding the amount of overdue support owed by an absent parent. The procedures must include use of guidelines that are generally available to the public to determine whether application of this procedure is inappropriate in a particular case. In cases in which the overdue support is less than $1,000, these procedures are at the option of the State.

(c) The State IV-D agency may charge the agency a fee not to exceed the actual cost to the State of providing the information under paragraph (b) of this section.

(d) The IV-D agency must provide advance notice to the absent parent who owes the support concerning the proposed release of the information to the consumer reporting agency and must inform the absent parent of the methods available for contesting the accuracy of the information.

(e) The IV-D agency must comply with all of the procedural due process requirements of State law before releasing the information.

(Approved by the Office of Management and Budget under control number 0960-0385)

[50 FR 19656, May 9, 1985; 50 FR 31720, Aug. 6, 1985, as amended at 51 FR 37731, Oct. 24, 1986]

§ 303.106 Procedures to prohibit retroactive modification of child support arrearages.

(a) The State shall have in effect and use procedures which require that any payment or installment of support under any child support order is, on and after the date it is due:

(1) A judgment by operation of law, with the full force, effect, and attributes of a judgment of the State, including the ability to be enforced;

(2) Entitled as a judgment to full faith and credit in such State and in any other State; and

(3) Not subject to retroactive modification by such State or by any other State except as provided in paragraph (b) of this section.

(b) The procedures referred to in paragraph (a)(3) of this section may permit modification with respect to any period during which there is pending a petition for modification, but only from the date that notice of such petition has been given, either directly or through the appropriate agent, to the obligee or (where the obligee is the petitioner) to the obligor.

[54 FR 15764, Apr. 19, 1989]

§ 303.107 Requirements for cooperative arrangements.

The State must ensure that all cooperative arrangements:

(a) Contain a clear description of the specific duties, functions and responsibilities of each party;

(b) Specify clear and definite standards of performance which meet Federal requirements;

(c) Specify that the parties will comply with title IV-D of the Act, implementing Federal regulations and any other applicable Federal regulations and requirements;

(d) Specify the financial arrangements including budget estimates, covered expenditures, methods of determining costs, procedures for billing the IV-D agency, and any relevant Federal and State reimbursement requirements and limitations;

(e) Specify the kind of records that must be maintained and the appropriate Federal, State and local reporting and safeguarding requirements; and

(f) Specify the dates on which the arrangement begins and ends, any conditions for revision or renewal, and the circumstances under which the arrangement may be terminated.

[54 FR 30223, July 19, 1989]

PART 304—FEDERAL FINANCIAL PARTICIPATION

Sec.

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AUTHORITY: 42 U.S.C. 651 through 655, 657, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396(k).

SOURCE: 40 FR 27166, June 26, 1975, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes affecting Part 304 appear at 47 FR 57284, Dec. 23, 1982.

§ 304.10 General administrative requirements.

As a condition for Federal financial participation, the provisions of Part 74 of this title (with the exception of Subpart G, Matching and Cost Sharing and Subpart I, Financial Reporting Requirements) establishing uniform administrative requirements and cost principles shall apply to all grants made to States under this part.

§ 304.11 Effect of State rules.

Subject to the provisions and limitations of Title IV-D of the Act and Chapter III, Federal financial participation will be available in expenditures made under the State plan (including the administration thereof) in accordance with applicable State laws, rules, regulations, and standards governing expenditures by State and local child support enforcement agencies.

§ 304.12 Incentive payments.

(a) *Definitions.* For the purposes of this section: "AFDC collections" means support collections satisfying an assigned support obligation under § 232.11 of this title or section 471(a)(17) of the Act, including collections treated in accordance with paragraph (b)(4)(ii) of this section.

"Non-AFDC Collections" means support collections, on behalf of individuals receiving services under this title, satisfying a support obligation which has not been assigned under § 232.11 of this title or section 471(a)(17) of the Act, including collections treated in accordance with paragraph (b)(4)(ii) of this section and collections made under §§ 302.51(e) of this chapter.

"Total IV-D administrative costs" means total IV-D administrative expenditures claimed by a State in a specified fiscal year adjusted in accordance with paragraphs (b)(4)(iii), (b)(4)(iv) and (b)(4)(v) of this section.

(b) *Incentive payments to States.* Effective October 1, 1985, the Office shall compute incentive payments for States for a fiscal year in recognition of AFDC collections and of non-AFDC collections.

(1) A portion of a State's incentive payment shall be computed as a percentage of the State's AFDC collections, and a portion of the incentive payment shall be computed as a percentage of its non-AFDC collections. The percentages are determined separately for AFDC and non-AFDC portions of the incentive. The percentages are based on the ratio of the State's AFDC collections to the State's total administrative costs and the State's non-AFDC collections to the State's total administrative costs in accordance with the following schedule:

Ratio of collections to total IV-D administrative costs	Percent of collection paid as an incentive
Less than 1.4	6.0
At least 1.4	6.5
At least 1.6	7.0
At least 1.8	7.5
At least 2.0	8.0
At least 2.2	8.5
At least 2.4	9.0
At least 2.6	9.5
At least 2.8	10.0

(2) The ratios of the State's AFDC and non-AFDC collections to total IV-D administrative costs will be truncated at one decimal place.

(3) The portion of the incentive payment paid to a State for a fiscal year in recognition of its non-AFDC collections is limited to the percentage of the portion of the incentive payment paid for that fiscal year in recognition of its AFDC collections, as follows:

(i) 100 percent in fiscal years 1986 and 1987;

(ii) 105 percent in fiscal year 1988;

(iii) 110 percent in fiscal year 1989; and

(iv) 115 percent in fiscal year 1990 and thereafter.

(4) In calculating the amount of incentive payments, the following conditions apply:

(i) Only those AFDC and non-AFDC collections distributed and expenditures claimed by the State in the fiscal year shall be used to determine the incentive payment payable for that fiscal year;

(ii) Support collected by one State on behalf of individuals receiving IV-D services in another State shall be treated as having been collected in full by each State;

(iii) Fees paid by individuals, recovered costs, and program income such as interest earned on collections shall be deducted from total IV-D administrative costs;

(iv) At the option of the State, laboratory costs incurred in determining paternity may be excluded from total IV-D administrative costs; and

(v) Effective January 1, 1990, amounts expended by the State in carrying out a special project under section 455(e) of the Act shall not be included in the State's total IV-D administrative costs.

(vi) Costs of demonstration projects for evaluating model procedures for reviewing child support awards under section 103(e) of Public Law 100-485 shall not be included in the State's total IV-D administrative costs.

(c) *Payment of incentives.* (1) The Office will estimate the total incentive payment that each State will receive for the upcoming fiscal year.

(2) Each State will include one-quarter of the estimated total payment in its quarterly collection report which will reduce the amount that would otherwise be paid to the Federal government to reimburse its share of assistance payments under §§ 302.51 and 302.52 of this chapter.

(3) Following the end of a fiscal year, the Office will calculate the actual incentive payment the State should have received based on the reports submitted for that fiscal year. If adjustments to the estimate made under paragraph (c)(1) of this section are necessary, the State's IV-A grant award will be reduced or increased because of over- or under-estimates for prior quarters and for other adjustments.

(4) For FY 1985, the Office will calculate a State's incentive payment based on AFDC collections retained by the State and paid to the family under § 302.51(b)(1) of this chapter.

(5) For FY 1986 and 1987, a State will receive the higher of the amount due it under the incentive system and Federal matching rate in effect as of FY 1986 or 80 percent of what it would have received under the incentive system and Federal matching rate in effect during FY 1985.

[54 FR 32312, Aug. 4, 1989]

§ 304.15 Cost allocation.

A State agency in support of its claims under Title IV-D of the Social Security Act must have an approved cost allocation plan on file with the Department in accordance with the requirements contained in Subpart E of 45 CFR Part 95. Subpart E also sets forth the effect on FFP if the requirements contained in that subpart are not met.

[47 FR 17509, Apr. 23, 1982]

§ 304.20 Availability and rate of Federal financial participation.

(a) Federal financial participation at the applicable matching rate is available for:

(1) Necessary expenditures under the State title IV-D plan for the support enforcement services and activities specified in this section and § 304.21 provided to individuals from whom an assignment of support rights has been obtained pursuant to § 232.11 of this title or section 471(a)(17) of the Act;

(2) Collection services pursuant to § 302.51(e)(1) of this chapter;

(3) Parent locator services for individuals eligible pursuant to § 302.33 of this title;

(4) Paternity and support services under the State plan for individuals eligible pursuant to § 302.33 of this chapter.

(b) Services and activities for which Federal financial participation will be available shall be those made pursuant to the approved title IV-D State plan which are determined by the Secretary to be necessary expenditures properly attributable to the Child Support Enforcement program, except any expenditure incurred in providing location services to individuals listed in § 302.35(c)(4) of this title, including the following:

(1) The administration of the State Child Support Enforcement program, including but not limited to the following:

(i) The establishment and administration of the State plan;

(ii) Monitoring the progress of program development and operations and evaluating the quality, efficiency, effectiveness and scope of support enforcement services available in each political subdivision;

(iii) The establishment of all necessary agreements with other State and local agencies or private providers for the provision of services in support of support enforcement in accordance with Subpart P, Procurement Standards, 45 CFR Part 74. These agreements may include:

(A) Necessary administrative agreements for support services;

(B) Utilization of State and local information resources;

(C) Cooperation with courts and law enforcement officials pursuant to § 302.34 of this chapter;

(iv) Securing compliance with the requirements of the State plan in operations under any agreements;

(v) The development and maintenance of systems for fiscal and program records and reports required to be made to the Office based on these records;

(vi) The development of a cost allocation system pursuant to § 302.16 of this chapter;

(vii) The financial control of the State plan including the administration of Federal grants pursuant to § 301.15 of this chapter;

(viii) The establishment of agreements with agencies administering the State's title IV-A and IV-E plans in order to establish criteria for:

(A) Referral of cases to the IV-D agency;

(B) Reporting on a timely basis information necessary to the determination and redetermination of eligibility and amount of assistance payments;

(C) Determining if individuals receiving assistance under the IV-A plan are cooperating adequately as required in § 232.12 of this title;

(D) The procedures to be used to transfer collections from the IV-D agency to the IV-A or IV-E agency before or after the distribution described in § 302.51 or § 302.52, respectively, of this chapter.

(2) The establishment of paternity including:

(i) Reasonable attempts to determine the identity of the child's father such as:

(A) Investigation;

(B) The development of evidence including the use of the polygraph and genetic tests;

(C) Pre-trial discovery;

(ii) Court or other actions to establish paternity pursuant to procedures established under State statutes or regulations having the effect of law;

(iii) Identifying competent laboratories that perform genetic tests as described in § 303.5(c) of this chapter and making a list of those laboratories available;

(iv) Referral of cases to the IV-D agency of another State to establish paternity when appropriate;

(v) Cooperation with other States in determining paternity;

(3) The establishment and enforcement of support obligations including:

(i) Investigation, the development of evidence and when appropriate, bringing court actions;

(ii) Determination of the amount of the child support obligation including developing the information needed for a financial assessment;

(iii) Referral of cases to the IV-D agency of another State to establish a child support obligation when appropriate;

(iv) Enforcement of a support obligation including those activities associated with collections and the enforcement of court orders, such as contempt citations, issuance of warrants, investigation, wage attachment and processing, and the obtaining and enforcing of court-ordered support through civil or criminal proceedings either in the State that granted the order or in another State;

(v) Investigation and prosecution of fraud related to child and spousal support.

(4) The collection and distribution of support payments including:

(i) An effective system for making collections of established support obligations and identifying delinquent cases and attempting to collect support from these cases;

(ii) Collection of support pursuant to § 302.51(e)(1) of this chapter;

(iii) Referral of cases to the IV-D agency of another State for collection when appropriate;

(iv) Making collections for another State;

(v) The distribution of funds as required by this chapter;

(vi) Making the IV-A agency aware of the amounts collected and distributed to the family for the purposes of determining eligibility for, and amount of, assistance under the State title IV-A plan;

(5) The establishment and operation of the State parent locator service including:

(i) Utilization of appropriate State and local locate sources to locate absent parents;

(ii) Utilization of the Federal Parent Locator Service;

(iii) Collection of the fee pursuant to § 303.70(e) of this chapter;

(iv) Referral of requests for location of an absent parent to the IV-D agency of another State;

(v) Cooperation with another State in locating an absent parent;

(6) Activities related to requests for certification of collection of support delinquencies by the Secretary of the Treasury pursuant to § 303.71 of this chapter.

(7) Activities related to requests for utilization of the United States district courts pursuant to § 303.73 of this chapter.

(8) Establishing and maintaining case records as required by § 302.2 of this chapter.

(9) The operation of systems that meet the conditions of § 307.35(a) of this chapter; and

(10) Systems approved in accordance with 45 CFR Part 95, Subpart F. (See § 307.35(b) of this chapter.)

(11) Required medical support activities as specified in Part 306, Subpart B, of this chapter.

(c) Federal financial participation is available at the 90 percent rate for the planning design, development, installation and enhancement of computerized support enforcement systems that meet the requirements in § 307.30(a) of this chapter.

[40 FR 27166, June 26, 1975, as amended at 46 FR 1276, Jan. 6, 1981; 47 FR 24719, June 8, 1982; 47 FR 57282, Dec. 23, 1982; 49 FR 33263, Aug. 22, 1984; 50 FR 19656, May 9, 1985; 50 FR 41894, Oct. 16, 1985; 54 FR 32313, Aug. 4, 1989]

§ 304.21 Federal financial participation in the costs of cooperative arrangements with courts and law enforcement officials.

(a) *General.* Subject to the conditions and limitations specified in this part, Federal financial participation (FFP) at the applicable matching rate is available in the costs of cooperative agreements with appropriate courts and law enforcement officials in accordance with the requirements of

§ 302.34 of this chapter. "Law enforcement officials" means district attorneys, attorneys general, and similar public attorneys and prosecutors and their staff. Then performed under written agreement, costs of the following activities are subject to reimbursement:

(1) The activities, including administration of such activities, specified in § 304.20(b)(2) through (8) of this chapter;

(2) Reasonable and essential short term training of court and law enforcement staff assigned on a full or part time basis to support enforcement functions under the cooperative agreement.

(b) *Limitations.* Federal financial participation is not available in:

(1) Service of process and court filing fees unless the court or law enforcement agency would normally be required to pay the cost of such fees;

(2) Costs of compensation (salary and fringe benefits) of judges;

(3) Costs of travel and training related to the judicial determination process incurred by judges;

(4) Office-related costs, such as space, equipment, furnishings and supplies, incurred by judges;

(5) Compensation (salary and fringe benefits), travel and training, and office-related costs incurred by administrative and support staffs of judges;

(6) Costs of cooperative arrangements that do not meet the requirements of § 303.107 of this chapter.

(c) *Methods of determining costs.* The State IV-D agency has discretion with respect to the method of calculating eligible expenditures by courts and law enforcement officials under cooperative agreements. However, any method used must account for specific costs incurred on behalf of cases receiving services under the IV-D State plan.

(d) *When agreements take effect.* FFP is available in IV-D costs incurred as of the first day of the calendar quarter in which a cooperative agreement or amendment is signed by parties sufficient to create a contractual arrangement under State law.

[47 FR 53017, Nov. 24, 1982, as amended at 47 FR 57284, Dec. 23, 1982; 50 FR 19656, May 9, 1985; 54 FR 30223, July 19, 1989]

§ 304.22 Federal financial participation in purchased support enforcement services.

Federal financial participation is available at the applicable matching rate for the purchase of support enforcement services as provided for in the State plan to the extent that payment for such purchased services is in accordance with rates of payment established by the State which do not exceed the amounts reasonable and necessary to assure quality of such service and in the case of such services purchased from other public agencies, the cost reasonably assignable to such services. The determination that the amounts are reasonable and necessary and that the costs are reasonably assignable must be fully documented in the IV-D agency records. Support enforcement services which may be purchased with Federal financial participation are those for which Federal financial participation is otherwise available under § 304.20 and which are included under the approved State plan.

[40 FR 27166, June 26, 1975, as amended at 47 FR 57282, Dec. 23, 1982; 50 FR 19656, May 9, 1985]

§ 304.23 Expenditures for which Federal financial participation is not available.

Federal financial participation at the applicable matching rate is not available for:

(a) Activities related to administering title I, IV-A, X, XIV, XVI, XIX or XX of the Act.

(b) Purchased support enforcement services which are not secured in accordance with § 304.22.

(c) Construction and major renovations.

(d) Education and training programs and educational services except direct cost of short term training provided to IV-D agency staff or pursuant to § 304.21.

(e) Any expenditures which have been reimbursed by fees collected as required by this chapter.

(f) Any costs of caseworkers as described in § 303.20(e) of this part.

(g) Medical support enforcement activities performed under cooperative agreements in accordance with Part 306 of this chapter.

(h) Any expenditures made to carry out an agreement under § 303.15 of this chapter.

(i) Any expenditures for jailing of parents in child support enforcement cases.

(j) The costs of counsel for indigent defendants in IV-D actions.

[46 FR 54559, Nov. 3, 1981, as amended at 47 FR 57282, Dec. 23, 1982; 50 FR 41894, Oct. 16, 1985; 52 FR 32132, Aug. 26, 1987; 54 FR 32313, Aug. 4, 1989]

§ 304.24 Equipment—Federal financial participation.

Claims for Federal financial participation in the cost of equipment under the Child Support Enforcement Program are to be determined in accordance with Subpart G of 45 CFR Part 95. Requirements concerning the management and disposition of equipment under the Child Support Enforcement Program are also prescribed in Subpart G of 45 CFR Part 95.

[47 FR 41576, Sept. 21, 1982]

§ 304.25 Treatment of expenditures; due date.

(a) *Treatment of expenditures.* Expenditures are considered to be made on the date on which the cash disbursements occur or the date to which allocated in accordance with Part 74 of this title. In the case of local administration, the date of disbursements by the local agency governs. In the case of purchase of services from another public agency, the date of disbursements by such other public agency governs. Different rules may be applied with respect to a State, either generally or for particular classes of expenditures only upon justification by the State to the Office of Child Support Enforcement and approval by the Office.

(b) *Due date for expenditure statements.* The due date for the submission of the quarterly statement of expenditures under § 301.15 of this chapter is 30 days after the end of the quarter.

[42 FR 26427, May 24, 1977]

§ 304.26 Determination of Federal share of collections.

(a) From the amounts of support collected by the State and retained as reimbursement for AFDC payments, the State shall reimburse the Federal government to the extent of its participation in the financing of the AFDC payment. In computing the Federal share of support collections, the State has two options:

(1) The State may use the AFDC FFP rate applicable to the period in which the assistance payment was made as follows:

(i) If the State uses the Federal medical assistance percentage under section 1118 of the Act, this percentage shall be used in computing the Federal share of collections.

(ii) If the State uses the computations in section 403(a) of the Act, the Federal share of collections shall be computed using the rate of Federal participation in the financing of:

(A) The individual assistance payment; or

(B) All of the assistance payments in the same month; or

(2) The State may use the current rate of AFDC FFP as follows:

(i) If the State uses the Federal medical assistance percentage under section 1118 of the Act, the percentage applicable at the time of distribution shall be used in computing the Federal share of collections.

(ii) If the State uses the computations in section 403(a) of the Act, the average rate of Federal participation in the financing of assistance payments during the immediately preceding quarter shall be used in computing the Federal share of collections.

(b) If an incentive payment is made to a jurisdiction under § 304.12 of this chapter for the enforcement and collection of support obligations, the payment shall be made from the Federal share of collections computed in paragraph (a) of this section.

[46 FR 6949, Jan. 22, 1981, as amended at 47 FR 37889, Aug. 27, 1982; 47 FR 57282, Dec. 23, 1982; 54 FR 32313, Aug. 4, 1989]

§ 304.27 [Reserved]

§ 304.29 Applicability of other regulations.

Sections 201.14 and 201.15 of Chapter II of Title 45 of the Code of Federal Regulations, which establish procedures for disallowance, deferral and reconsideration of claims for expenditures submitted by the States, shall apply to all expenditures claimed for FFP under title IV-D of the Act. For purposes of applying those provisions under title IV-D, "Service" shall read "Office" which refers to the Office of Child Support Enforcement; "Administrator" shall read "Director" which refers to the Director, Office of Child Support Enforcement; "Deputy Administrator" shall read "Deputy Director" which refers to the Deputy Director, Office of Child Support Enforcement; "Regional Commissioner" shall read "Regional Representative" which refers to the Regional Representatives of the Office of Child Support Enforcement; and "State" shall refer to the State IV-D agency.

[42 FR 3843, Jan. 21, 1977]

§ 304.30 Public sources of State's share.

(a) Public funds, other than those derived from private resources, used by the IV-D agency for its child support enforcement program may be considered as the State's share in claiming Federal reimbursement where such funds are:

(1) Appropriated directly to the IV-D agency; or

(2) Funds of another public agency which are:

(i) Transferred to the IV-D agency and are under its administrative control; or

(ii) Certified by the contributing public agency as representing expenditures under the State's IV-D plan, subject to the limitations of this part.

(b) Public funds used by the IV-D agency for its child support enforcement program may not be considered as the State's share in claiming Federal reimbursement where such funds are:

(1) Federal funds, unless authorized by Federal law to be used to match other Federal funds;

(2) Used to match other Federal funds.

[41 FR 7105, Feb. 17, 1976]

§ 304.40 Repayment of Federal funds by installments.

(a) *Basic conditions.* When a State has been reimbursed Federal funds for expenditures claimed under title IV-D, which is later determined to be unallowable for Federal financial participation, the State may make repayment of such Federal funds in installments provided:

(1) The amount of the repayment exceeds 2½ percent of the estimated annual State share of expenditures for the IV-D program as set forth in paragraph (b) of this section; and

(2) The State has notified the OCSE Regional Representative in writing of its intent to make installment repayments. Such notice must be given prior to the time repayment of the total was otherwise due.

(b) *Criteria governing installment repayments.* (1) The number of quarters over which the repayment of the total unallowable expenditures will be made will be determined by the percentage the total of such repayment is of the estimated State share of the annual expenditures for the IV-D program as follows:

Total repayment amount as percentage of State share of annual expenditures for the IV-D program	Number of quarters to make repayment
2.5 percent or less	1
Greater than 2.5, but not greater than 5	2
Greater than 5, but not greater than 7.5	3
Greater than 7.5, but not greater than 10	4
Greater than 10, but not greater than 15	5
Greater than 15, but not greater than 20	6
Greater than 20, but not greater than 25	7
Greater than 25, but not greater than 30	8
Greater than 30, but not greater than 47.5	9
Greater than 47.5, but not greater than 65	10
Greater than 65, but not greater than 82.5	11
Greater than 82.5, but not greater than 100	12

The quarterly repayment amounts for each of the quarters in the repayment schedule shall not be less than the following percentages of estimated State share of the annual expenditures for the program against which the recovery is made.

For each of the following quarters	Repayment installment may not be less than these percentages
1 to 4	2.5
5 to 8	5.0
9 to 12	17.5

If the State chooses to repay amounts representing higher percentages during the early quarters, any corresponding reduction in required minimum percentages would be applied first to the last scheduled payment, then to the next to the last payment, and so forth as necessary.

(2) The latest OCSE-OA-25 submitted by the State shall be used to estimate the State's share of annual expenditures for the IV-D program. That estimated share shall be the sum of the State's share of the estimates (as shown on the latest OSCE-OA-25) for four quarters, beginning with the quarter in which the first installment is to be paid.

(3) In case of termination of the program, the actual State share—rather than the estimate—shall be used for determining whether the amount of the repayment exceeds 2½ percent of the annual State share for the IV-D program. The annual State share in these cases will be determined using payments computable for Federal funding as reported for the program by the State on its Quarterly Statement of Expenditures (SRA-OA-41) reports submitted for the last four quarters preceding the date on which the program was terminated.

(4) Repayment shall be accomplished through adjustment in the quarterly grants over the period covered by the repayment schedule.

(5) The amount of the repayment for purpose of paragraphs (a) and (b) of this section may not include any amount previously approved for installment repayment.

(6) The repayment schedule may be extended beyond 12 quarterly installments if the total repayment amount exceeds 100% of the estimated State share of annual expenditures. In these circumstances, the criteria in paragraphs (b) (1) and (2) or (3) of this section, as appropriate, shall be followed for repayment of the amount equal to 100% of the annual State share. The remaining amount of the repayment shall be in quarterly amounts not less than those for the 9th through 12th quarters.

(7) The amount of a retroactive claim to be paid a State will be offset against any amounts to be, or already being, repaid by the State in installments, under the same title of the Social Security Act. Under this provision the State may choose to:

(i) Suspend payments until the retroactive claim due the State has, in fact, been offset; or

(ii) Continue payments until the reduced amount of its debt (remaining after the offset), has been paid in full. This second option would result in a shorter payment period.

A retroactive claim for the purpose of this regulation is a claim applicable to any period ending 12 months or more prior to the beginning of the quarter in which the payment is to be made by the Service.

[42 FR 28885, June 6, 1977, as amended at 52 FR 273, Jan. 5, 1987]

§ 304.50 Treatment of program income.

The IV-D agency must exclude from its quarterly expenditure claims an amount equal to:

(a) All fees which are collected during the quarter under the title IV-D State plan; and

(b) All interest and other income earned during the quarter resulting from services provided under the IV-D State plan.

[49 FR 36772, Sept. 19, 1984]

§ 304.95 State Commissions on Child Support.

(a) As a condition of the State's eligibility for Federal payments under title IV-A or D of the Act for quarters beginning more than 30 days after August 16, 1984, and ending prior to October 1, 1985, the Governor of each State, on or before December 1, 1984, shall appoint a State Commission on Child Support.

(b) Each State Commission appointed under paragraph (a) of this section shall be composed of members appropriately representing all aspects of the child support system, including custodial and non-custodial parents, the IV-D agency, the State judiciary, the executive and legislative branches of the State government, child welfare and social services agencies, and others.

(c) Each State Commission shall examine, investigate and study the operation of the State's child support system for the primary purpose of determining the extent to which such system has been successful in securing support and parental involvement both for children who are eligible for aid under a State IV-A or D plan and for children who are not eligible for such aid, giving particular attention to such specific problems (among others) as visitation, the establishment of appropriate objective standards for support, the enforcement of interstate obligations, the availability, cost, and effectiveness of services both to children who are eligible for such aid and to children who are not, and the need for additional State or Federal legislation to obtain support for all children.

(d) Each State Commission shall submit to the Governor of the State and make available to the public, no later than October 1, 1985, a full and complete report of its findings and recommendations resulting from the examination, investigation, and study under this section. The Governor shall transmit such report to the Secretary along with the Governor's comments thereon.

(e) None of the costs incurred in the establishment and operation of a State Commission under this section, or incurred by such a Commission in carrying out its functions under paragraphs (c) and (d) of this section, shall be considered as expenditures qualifying for Federal payments under title IV-A and D of the Act or be otherwise payable or reimbursable by the United States or any agency thereof.

(f) A State shall not be required to establish a State Commission under this section and the preceding provisions of this section shall not apply, if the Secretary determines, at the request of any State on the basis of information submitted by the State and such other information as may be available to the Secretary, that such State—

(1) Has placed in effect and is implementing objective standards for the determination and enforcement of child support obligations;

(2) Has established within the five years prior to August 1984 a commission or council with substantially the same functions as the State Commissions provided for under this section; or

(3) Is making satisfactory progress toward fully effective child support enforcement and will continue to do so.

(Approved by the Office of Management and Budget under control number 0960-0385)

[50 FR 19656, May 9, 1985; 50 FR 23958, June 7, 1985; 50 FR 31720, Aug. 6, 1985, as amended at 51 FR 37732, Oct. 24, 1986]

PART 305—AUDIT AND PENALTY

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AUTHORITY: 42 U.S.C. 603(h), 604(d), 652(a) (1) and (4), and 1302.

SOURCE: 41 FR 55348, Dec. 20, 1976, unless otherwise noted.

§ 305.0 Scope.

This part implements the requirements in sections 452(a)(4) and 403(h) of the Act for an audit, at least once every three years, of the effectiveness of State Child Support Enforcement programs under title IV-D and for a possible reduction in Federal reimbursement for a State's title IV-A program pursuant to sections 403(h) and 404(d) of the Act. Sections 305.10 through 305.13 describe the audit. Section 305.20 defines an effective program for the purposes of this part. Sections 305.21 through 305.56 and § 305.98 establish audit criteria the Office will use to determine program effectiveness. Section 305.98 also establishes performance indicators the Office will use to determine State IV-D program effectiveness. Section 305.99 provides for the issuance of a notice and corrective action period if a State is found by the Secretary not to have have an effective IV-D program. Section 305.100 provides for the imposition of a penalty if a State is found by the Secretary not to have had an effective program and fails to take corrective action and achieve substantial compliance within the period prescribed by the Secretary.

[50 FR 40140, Oct. 1, 1985]

§ 305.1 Definitions.

(a) The definitions found in § 301.1 of this chapter also are applicable to this part.

(b) As used in this part "procedures" means a written set of instructions which describe in detail the step by step actions to be taken by child support enforcement personnel in the performance of a specific function under the State's IV-D plan. The IV-D agency may issue general instructions on one or more functions, and delegate responsibility for the detailed procedures to the office, agency, or political subdivision actually performing the function.

§ 305.10 Timing and scope of audit.

(a) The Office will conduct an audit in accordance with sections 452(a)(4) and 403(h) of the Act, at least once every three years, to evaluate the effectiveness of each State's program in carrying out the purposes of title IV-D of the Act and to determine that the program meets the title IV-D requirements. The audit of each State's program will be a comprehensive review using the criteria prescribed in §§ 305.21 through 305.56 and § 305.98 of this part.

(b) The Office will conduct an annual comprehensive audit in the case of a State that is being penalized. For a State operating under a corrective action plan, the review at the end of the corrective action period will cover only the criteria specified in the notice of non-compliance as prescribed in § 305.99 of this part.

(c) During the course of the audit, the Office will:

(1) Make a critical investigation of the State's IV-D program through inspection, inquiries, observation, and confirmation; and

(2) Use the audit standards promulgated by the Comptroller General of the United States in the "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions."

[50 FR 40140, Oct. 1, 1985; 50 FR 49392, Dec. 2, 1985]

§ 305.11 Audit period.

The audit will cover a period comprised of any 12 consecutive months. When the State is operating under a corrective action plan, the review will cover the first three-month period after the corrective action period. When the State fails to meet audit criteria related to the performance indicator under § 305.98 of this part, the review will cover the first full four quarters following the end of the corrective action period. The audit may, at State request, be conducted prior to the end of the one-year period prescribed under § 305.10(b) of this part when the State is being penalized under § 305.100 of this part.

[55 FR 8467, Mar. 8, 1990]

§ 305.12 State comments.

(a) Prior to the start of the actual audit, the Office will hold an audit entrance conference with the IV-D agency. At that conference the Office will explain how the audit will be performed, inform the IV-D agency which political subdivisions of the State will be audited, and make preliminary arrangements for personnel and information to be made available.

(b) Prior to concluding the audit fieldwork, the Office will afford the State IV-D agency an opportunity for an audit exit conference at which time preliminary audit findings will be discussed and the IV-D agency may present any additional matter it believes should be considered in the audit findings.

(c) At the conclusion of the audit fieldwork, the Office will prepare and send to the IV-D agency a copy of its interim report on the results of the audit. Within 45 days from the date the report was sent by certified mail, the IV-D agency may submit written comments on any part of the report which the IV-D agency believes to be in error. The Office will incorporate such comments, if any, into the final audit report.

§ 305.13 State cooperation in annual audit.

(a) Each State shall make available to the Office such records or other supporting documentation as the Office's audit staff may request. The State shall also make available personnel associated with the State's IV-D program to provide answers which the audit staff may find necessary in order to conduct or complete the audit.

(b) Failure to comply with the requirements of this section may necessitate a finding that the State has failed to comply with the particular criteria being audited.

§ 305.20 Effective support enforcement program.

For the purposes of this part and section 403(h) of the Act, in order to be found to have an effective program in substantial compliance with the requirements of title IV-D of the Act, a State must meet the IV-D State plan requirements contained in Part 302 of this chapter measured as follows:

(a) For the fiscal year 1984 audit period:

(1) The following audit criteria must be met:

Statewide operation. (45 CFR 305.21(d))
State financial participation. (45 CFR 305.22 (a) and (b))
Single and separate organizational unit. (45 CFR 305.23 (a) and (b))
Establishing paternity. (45 CFR 305.24(b))
Enforcement of support obligation. (45 CFR 305.26 (c) and (d))
Distribution of child support payment. (45 CFR 305.28(a))
State parent locator service. (45 CFR 305.33(e))
Cooperative arrangements. (45 CFR 305.34)
Reports and maintenance of records. (45 CFR 305.35 (a) and (b))
Fiscal policies and accountability. (45 CFR 305.36(a))

(2) The procedures required by the following audit criteria must be used in 75 percent of the cases reviewed for each criterion:

Establishing paternity. (45 CFR 305.24(c))
Support obligations. (45 CFR 305.25 (a) and (b))

Enforcement of support obligation. (45 CFR 305.26 (a), (b), and (e))
Support payments to the IV-D agency. (45 CFR 305.27 (a), (b), and (d))
Distribution of support payment. (45 CFR 305.28(b))
Payments to the family. (45 CFR 305.29)
Individuals not otherwise eligible. (45 CFR 305.31 (a), (b), and (c))
Cooperation with other States. (45 CFR 305.32 (a), (b), (c), (d), (e), (f), and (g))
State parent locator service. (45 CFR 305.33 (a) and (g))

(b) Beginning with fiscal year 1985 audit period:

(1) The criteria prescribed in paragraph (a)(1) of this section and the following audit criteria must be met:

Bonding of employees. (45 CFR 305.37(a) and (c))
Separation of cash handling and accounting functions. (45 CFR 305.38(a) and (c))
Withholding of unemployment compensation. (45 CFR 305.39 (a) through (h))
Federal tax refund offset. (45 CFR 305.40(a))
Recovery of direct payments. (45 CFR 305.41(a))
Spousal support. (45 CFR 305.42(a))
90 percent Federal financial participation for computerized support enforcement systems. (45 CFR 305.43)

(2) The procedures required by the criteria prescribed in paragraph (a)(2) of this section and the following audit criteria must be used in 75 percent of the cases reviewed for each criterion:

Withholding of unemployment compensation. (45 CFR 305.39(i))
Federal tax refund offset. (45 CFR 305.40(b))
Recovery of direct payments. (45 CFR 305.41(b))
Spousal support. (45 CFR 305.42(b))

(c) For the fiscal year 1986 and 1987 audit periods:

(1) The criteria prescribed in paragraphs (a)(1) and (b)(1) of this section and the following criteria must be met:

Publicizing the availability of support enforcement services. (45 CFR 305.44)
Notice of collection of assigned support. (45 CFR 305.45(a))
Incentive payments to States and political subdivisions. (45 CFR 305.46(a))
Payment of support through the IV-D agency or other entity. (45 CFR 305.48 (a) and (b))
Wage or income withholding. (45 CFR 305.49(a))
Expedited processes. (45 CFR 305.50(a) and (b))
Collection of overdue support by State income tax refund offset. (45 CFR 305.51(a))
Imposition of liens against real and personal property. (45 CFR 305.52(a))
Posting security, bond or guarantee to secure payments of overdue support. (45 CFR 305.53(a))
Making information available to consumer reporting agencies. (45 CFR 305.54(a))
Imposition of late payment fees on absent parents who owe overdue support. (45 CFR 305.55(a))
Medical support. (45 CFR 305.56(a))

(2) The procedures required by the criteria prescribed in paragraphs (a)(2) and (b)(2) of this section and the following audit criteria must be used in 75 percent of the cases reviewed for each criterion:

Notice of collection of assigned support. (45 CFR 305.45(b))
Incentive payments to States and political subdivisions. (45 CFR 305.46(b))
Payment of support through the IV-D agency or other entity. (45 CFR 305.48(c))
Wage or income withholding. (45 CFR 305.49(b))
Collection of overdue support by State income tax refund offset. (45 CFR 305.51(b))
Imposition of liens against real and personal property. (45 CFR 305.52(b))
Posting security, bond or guarantee to secure payment of overdue support. (45 CFR 305.53(b))
Making information available to consumer reporting agencies. (45 CFR 305.54(b))
Imposition of late payment fees on absent parents who owe overdue support. (45 CFR 305.55(b))
Medical support. (45 CFR 305.56(a))

(3) The criteria prescribed in § 305.98(c) of this part relating to the performance indicators prescribed in paragraph (a) of that section must be met.

(d) For fiscal year 1988 and future audit periods:

(1) The criteria prescribed in paragraphs (a)(1), (b)(1) and (c)(1) of this section must be met.

(2) The procedures required by the criteria prescribed in paragraphs (a)(2), (b)(2) and (c)(2) of this section must be used in 75 percent of the cases reviewed for each criterion.

(3) The criteria prescribed in 45 CFR 305.47, Guidelines for setting child support awards, must be met.

(4) The criteria referred to in § 305.98(d) of this part relating to the performance indicators prescribed in paragraphs (a) and (b) of that section must be met.

(5) Effective August 22, 1988 the procedures required by the criteria prescribed in § 305.32 (a) through (h) of this part must be used in 75 percent of the cases reviewed for each criterion.

(Approved by the Office of Management and Budget under control number 0960-0385)

[50 FR 40140, Oct. 1, 1985, as amended at 50 FR 41894, Oct. 16, 1985; 50 FR 49392, Dec. 2, 1985; 51 FR 37732, Oct. 24, 1986; 53 FR 5258, Feb. 22, 1988; 53 FR 27518, July 21, 1988]

§ 305.21 Statewide operation.

For the purposes of this part, in order to be found to be in compliance with the State plan requirement of Statewide operation (45 CFR 302.10), a State must have a IV-D agency that:

(a) Administers the plan uniformly throughout the State, or supervises the administration of the plan by its political subdivisions;

(b) Has established and is utilizing methods of informing staff of State policies, standards, procedures, and instructions;

(c) Has assigned IV-D staff at the State level to conduct regular, planned examination and evaluation of operation in local offices; and

(d) Makes available the services and functions as required by the approved State plan throughout the State.

§ 305.22 State financial participation.

For the purposes of this part, in order to be found to be in compliance with the State plan requirement for State financial participation (45 CFR 302.11):

(a) A State must participate financially by incurring the applicable State share of the program's administrative costs as follows:

FY 1983 through FY 1987—30 percent
FY 1988 and FY 1989—32 percent
FY 1990 and thereafter—34 percent; and

(b) The funds representing the State's share must be appropriated to the IV-D Agency or transferred to the IV-D Agency, or certified by the contributing public agency as representing expenditures under the State's IV-D plan.

[41 FR 55348, Dec. 20, 1976, as amended at 47 FR 57284, Dec. 23, 1982; 50 FR 19657, May 9, 1985]

§ 305.23 Single and separate organizational unit.

For the purposes of this part, in order to be found to be in compliance with the State plan requirement for a single and separate organizational unit to administer the IV-D plan (45 CFR 302.12), a State must have such a unit which:

(a) Is responsible and accountable for the operation of the IV-D plan and for no other program or activity;

(b) Is responsible for securing compliance with requirements of the IV-D plan delegated to any other State or local agency or official, performed under cooperative agreement or purchase of service agreement; and

(c) Has staff assigned to perform all of the required State level functions listed in § 303.20(b) of this chapter.

§ 305.24 Establishing paternity.

For the purposes of this part, in order to be found to be in compliance with the State plan requirement that the State undertake the establishment of paternity (45 CFR 302.31(a) and 302.33), a State must:

(a) Have established and be utilizing written procedures for obtaining the identity of the putative father from the applicant or recipient;

(b) Have established and use written procedures for establishing the paternity of any child at least until the child's 18th birthday:

(1) By court order or other legal process established by State law; and

(2) By acknowledgment, if under State law such acknowledgment has the same legal effect as court ordered paternity, including the rights to benefits other than child support.

(c) By utilizing such written procedures to establish the paternity of any child born out of wedlock whose paternity has not previously been established and with respect to whom there is an assignment pursuant to § 232.11 of this title or section 471(a)(17) of the Act in effect or with respect to whom there is an application for child support services pursuant to § 302.33 of this chapter;

(d) Have identified and made a list of all laboratories within the State which, in the opinion of the IV-D agency, perform legally and medically acceptable tests, including blood tests, which tend to confirm or refute the alleged paternity, and have made such list available to appropriate court and law enforcement officials, and to the public upon request;

(e) Have identified all State statutes and regulations that provide procedures to be used in determining the paternity of a child born out of wedlock as required by § 302.17 of this chapter;

(f) Have available attorneys or prosecutors to represent the State in court or administrative proceedings when necessary with respect to the establishment of paternity; and

(g) Have personnel, such as interviewers, investigators, clerical and other support staff performing paternity establishment functions.

(Approved by the Office of Management and Budget under control number 0960-0385)

[41 FR 55348, Dec. 20, 1976, as amended at 50 FR 40141, Oct. 1, 1985; 51 FR 37732, Oct. 24, 1986]

§ 305.25 Support obligations.

For the purposes of this part, in order to be found to be in compliance with the State plan requirement to establish support obligations (45 CFR 302.50 and 302.53), a State must:

(a) Have established and be utilizing written procedures for the establishment of a child support obligation for any child:

(1) With respect to whom there is an assignment pursuant to § 232.11 of this title or section 471(a)(17) of the Act in effect or with respect to whom there is an application for child support services pursuant to § 302.33 of this chapter.

(2) Who has not previously had a child support obligation established by court order or by other legal process established under State law;

(b) If the support obligation is established by means other than a court order, utilize the State's formula, pursuant to § 302.53 of this chapter, for determining the amount of the support obligation;

(c) Have available attorneys or prosecutors to represent the State in court or administrative proceedings when necessary to establish the support obligation; and

(d) Have personnel, such as interviewers, investigators, clerical, and other support staff, establishing support obligations.

[41 FR 55348, Dec. 20, 1976, as amended at 50 FR 40141, Oct. 1, 1985]

§ 305.26 Enforcement of support obligation.

For the purposes of this part, in order to be found to be in compliance with the State plan requirement to enforce support obligations (45 CFR 302.31(b)), a State must:

(a) Have established and be utilizing written procedures for identifying as delinquent those cases in which there is a failure to comply with the support obligation;

(b) Have established and be utilizing written procedures for contacting delinquent obligors for the purpose of collecting the support obligation;

(c) Have identified and established the appropriate written procedures, including but not limited to those specified in § 303.6 of this chapter, to enforce support obligations under the State's statutes or regulations;

(d) Have established writen procedures for using reciprocal support enforcement arrangements that have been adopted with other States;

(e) Take appropriate action, using the procedures the State has established, to enforce support obligations;

(f) Have attorneys or prosecutors to represent the State in court or administrative proceedings when necessary to enforce delinquent support obligations; and

(g) Have personnel, such as interviewers, investigators, clerks and other support staff performing support obligation enforcement functions.

[41 FR 55348, Dec. 20, 1976, as amended at 47 FR 57282, Dec. 23, 1982]

§ 305.27 Support payments to the IV-D agency.

For the purposes of this part, in order to be found to be in compliance with the State plan requirement of support payments to the IV-D Agency (45 CFR 302.32) a State must:

(a) Have established and be utilizing written procedures for the receipt of support payments by the IV-D agency with respect to cases in which there is an assignment of support rights pursuant to § 232.11 of this title or section 471(a)(17) of the Act;

(b) Have established and be utilizing written procedures for the receipt of child support payments by the IV-D agency with respect to cases in which there is an application for child support services pursuant to § 302.33 of this chapter; unless, receipt of such payment is not necessary because:

(1) The State, under its approved title IV-D plan, does not recover costs in excess of the application fee; and

(2) The IV-D agency has established a system, approved by the Regional Office, for insuring that the IV-D agency can accurately make collections reports as required by the Office;

(c) Have established and be utilizing written procedures to identify support payments that are not being received by the IV-D agency and to take corrective action;

(d) Have established and be utilizing written procedures that meet the requirements of § 302.32(b) of this chapter for informing the State's IV-A agency of the amounts of collection so that the family's continued eligibility for assistance payments can be determined; and

(e) Have personnel performing the activities described in this section.

[41 FR 55348, Dec. 20, 1976, as amended at 47 FR 57282, Dec. 23, 1982; 50 FR 19657, May 9, 1985]

§ 305.28 Distribution of support payment.

For the purposes of this part, in order to be found to be in compliance with the State plan requirement for distribution of support collections (45 CFR 302.51, 302.52 and 302.32), a State must:

(a) Have written procedures which, if properly applied, would result in a distribution of support collections which is in accordance with §§ 302.51, 302.52 and 302.32 of this chapter;

(b) Be making the distribution of support collections pursuant to the procedures it has established; and

(c) Have personnel distributing support collections.

[41 FR 55348, Dec. 20, 1976, as amended at 47 FR 57282, Dec. 23, 1982; 50 FR 40141, Oct. 1, 1985]

§ 305.29 Payments to the family.

For the purposes of this part, in order to be found to be in compliance with the State plan requirement for payment to the family (45 CFR 302.38), a State must distribute any payments required to be made to the family under §§ 302.32 and 302.51 of this chapter to the resident parent, legal guardian, or caretaker relative having custody of, or responsibility for, the child or children.

§ 305.31 Individuals not otherwise eligible.

For the purposes of this part, in order to be found to be in compliance with the State plan requirement for providing support enforcement services to individuals not otherwise eligible (45 CFR 302.33), a State must:

(a) Have established and be utilizing written procedures for accepting signed, written applications on a Statewide basis for support services from individuals not otherwise eligible under § 302.31 of this chapter.

(b) Have established and be utilizing written procedures for providing to applicants on a Statewide basis, all appropriate support services available under the State's plan, including locating absent parents, establishing paternity and securing support;

(c) Have established and be utilizing written procedures for collection of any fees and recovery of any costs authorized by the State's plan; and

(d) Have personnel performing support enforcement services for applicants.

[41 FR 55348, Dec. 20, 1976, as amended at 47 FR 57282, Dec. 23, 1982]

§ 305.32 Provision of services in interstate IV-D cases.

For purposes of this part, to be found in compliance with the State plan requirement for provision of services in interstate IV-D cases (45 CFR 302.36), a State must:

(a) Have established and be utilizing written procedures for accepting and processing requests for assistance from other States;

(b) Have established and be utilizing written procedures for using the State's PLS (both State and local locate sources) in an attempt to locate an absent parent upon request of another State;

(c) Have established and be utilizing written procedures for:

(1) Using its long-arm statute to establish paternity in its own cases, if the State has a long-arm statute that allows establishment of paternity; and

(2) Establishing paternity or assisting in establishing paternity when requested by another State.

(d) Have established and be utilizing written procedures for establishing support orders upon request by another State, including procedures for responding to a complaint under the Uniform Reciprocal Enforcement of Support Act (URESA);

(e) Have established and be utilizing written procedures for collecting support payments from an absent parent and forwarding such payments to the State where the obligation is owed;

(f) Have established and be utilizing written procedures governing the central registry and its required activities;

(g) Have established and be utilizing written procedures for maintenance of case records and monitoring the status of cases upon which the State is taking action on behalf of another State;

(h) Have established and be utilizing written procedures that comply with the requirements for providing sufficient information to other States as specified in § 303.7 of this chapter;

(i) Have personnel at the State level coordinating activities pursuant to, and assuring compliance with, the requirements of the State's URESA; and

(j) Have personnel performing the functions specified in this section.

(Approved by the Office of Management and Budget under control number 0970-0085)

[41 FR 55348, Dec. 20, 1976, as amended at 53 FR 5258, Feb. 22, 1988; 53 FR 18987, May 26, 1988]

§ 305.33 State parent locator service.

For the purposes of this part, in order to be found to be in compliance with the State plan requirement for a parent locator service (45 CFR 302.35), a State must:

(a) Have established and be utilizing a central State PLS office as required by § 302.35(a) of this chapter;

(b) Have identified and be utilizing major local locate data sources within the State such as those listed in § 303.3(a) of this chapter;

(c) Have identified and be utilizing major State locate data sources such as those listed in § 303.3(c) of this chapter;

(d) Be utilizing the Federal PLS when necessary pursuant to § 302.35(a)(2) of this chapter;

(e) Have established written procedures for accepting from a person authorized under § 302.35(c) of this chapter, an application to use the PLS;

(f) Have established and be utilizing written procedures for collecting any fees required by § 303.70(e)(2) of this chapter and the State's plan;

(g) Be using the names and other identifying information of absent parents, the State and local locate data sources and the Federal PLS, in an attempt to determine the actual whereabouts of the absent parent, or determine that the whereabouts of the absent parent cannot be ascertained;

(h) Have personnel, such as interviewers, investigators, clerks and other support staff performing the functions described in this section.

[41 FR 55348, Dec. 20, 1976, as amended at 47 FR 24719, June 8, 1982]

§ 305.34 Cooperative arrangements.

For the purpose of this part, in order to be found in compliance with the State plan requirements for cooperative arrangements (45 CFR 302.34), a State must enter into written cooperative agreements with appropriate courts and law enforcement officials when necessary to establish and enforce support obligations, collect support and cooperate with other States in these functions. The cooperative arrangements must meet the requirements at § 303.107 of this chapter.

(Approved by the Office of Management and Budget under control number 0960-0385)

[50 FR 40142, Oct. 1, 1985; 50 FR 49392, Dec. 2, 1985, as amended at 51 FR 37732, Oct. 24, 1986; 54 FR 30223, July 19, 1989]

§ 305.35 Reports and maintenance of records.

For the purposes of this part, in order to be found to be in compliance with the State plan requirement for reports and maintenance of records (45 CFR 302.15), a State must:

(a) Have established and be utilizing written procedures for maintaining the records necessary for proper and efficient operation of the plan including those listed in § 302.15(a)(1) (i) through (vii) of this chapter;

(b) Have established and be utilizing a system for insuring that reports required by the Secretary are provided when due, and are accurate and complete; and

(c) Have personnel performing the functions specified in this section.

§ 305.36 Fiscal policies and accountability.

For the purposes of this part, in order to be found to be in compliance with the State plan requirement for fiscal policies and accountability (45 CFR 302.14), a State must:

(a) Have established and be maintaining and utilizing an accounting system and supporting fiscal records that assure that claims for Federal funds are in accord with applicable Federal regulations and instructions issued by the Office; and

(b) Have personnel performing the functions specified in this section.

§ 305.37 Bonding of employees.

For the purposes of this part, to be found in compliance with the State plan requirement for bonding of employees (45 CFR 302.19), a State must:

(a) Have written procedures to ensure that every person, including the individuals prescribed in § 302.19(b) of this chapter, who, as a regular part of his or her employment, receives, disburses, handles or has access to or control over funds collected under the Child Support Enforcement program is covered by a bond against loss resulting from employee dishonesty;

(b) Have written procedures for obtaining a bond in an amount which the State IV-D agency deems adequate to indemnify the State IV-D program for loss resulting from employee dishonesty; and

(c) Use the written procedures specified above.

(Approved by the Office of Management and Budget under control number 0960-0385)

[50 FR 40142, Oct. 1, 1985, as amended at 51 FR 37732, Oct. 24, 1986]

§ 305.38 Separation of cash handling and accounting functions.

(a) For the purposes of this part, to be found in compliance with the State plan requirement for the separation of cash handling and accounting functions (45 CFR 302.20), a State must have written administrative procedures:

(1) Designed to assure that persons, including the individuals specified in § 302.20(b) of this chapter, responsible for handling cash receipts of support do not participate in accounting or operating functions which would permit them to conceal in the accounting records the misuse of support receipts; and

(2) Designed to assure use of generally accepted accounting principles.

(b) The requirements prescribed in paragraph (a) of this section do not apply to sparsely populated geographic areas within the State granted a waiver under § 302.20(c) of this chapter by the Regional Office.

(c) The State must use the written procedures specified above.

(Approved by the Office of Management and Budget under control number 0960-0385)

[50 FR 40142, Oct. 1, 1985, as amended at 51 FR 37732, Oct. 24, 1986]

§ 305.39 Withholding of unemployment compensation.

For the purposes of this part, to be found in compliance with the State plan requirement for the withholding of unemployment compensation (45 CFR 302.65), a State must:

(a) Have negotiated a cost effective cooperative agreement with the State Employment Security Agency (SESA) that provides for:

(1) Exchange of information;

(2) The withholding of unemployment compensation benefits to satisfy unmet support obligations;

(3) Payment of withheld unemployment compensation by the SESA to the IV-D agency; and

(4) Reimbursement of administrative costs of the SESA by the IV-D agency.

(b) Have written procedures to determine, based on information provided by the SESA, whether individuals who apply for or receive unemployment compensation owe support obligations that are being enforced by the IV-D agency;

(c) Have written procedures for arranging for the withholding of unemployment compensation:

(1) Pursuant to a voluntary agreement with the individual who owes support; or

(2) Pursuant to legal process under State or local law;

(d) Have written criteria for selecting cases to pursue by the withholding of unemployment compensation process for the collection of past-due support;

(e) Have written procedures for providing a receipt at least annually to an individual who requests a receipt for the support paid by the withholding of unemployment compensation, if receipts are not provided through other means;

(f) Have written procedures for maintaining direct contact with the SESA in its State as prescribed in § 302.65(c)(5) of this chapter;

(g) Have written procedures for the reimbursement of the administrative costs incurred by the SESA that are actual, incremental costs attributable to the process of withholding of unemployment compensation for support purposes insofar as these costs have been agreed upon by the SESA and the IV-D agency;

(h) Have written procedures to review and document, at least annually, the State withholding of unemployment compensation program, including the case selection criteria and costs of the withholding process versus the amounts collected and, as necessary, modify the procedures and renegotiate the services provided by the SESA to improve program and cost effectiveness;

(i) Use of written procedures specified above; and

(j) Have personnel performing the activities described above.

(Approved by the Office of Management and Budget under control number 0960-0385)

[50 FR 40142, Oct. 1, 1985, as amended at 51 FR 37732, Oct. 24, 1986]

§ 305.40 Federal tax refund offset.

For the purpose of this part, to be found in compliance with the State plan requirement for Federal tax refund offset (45 CFR 302.60), a State must:

(a) Have written procedures to obtain payment of past-due support from Federal tax refunds in accordance with section 464 of the Act, § 303.72 of this chapter and regulations of the Internal Revenue Service at 26 CFR 301.6402-5;

(b) Use the written procedures specified above; and

(c) Have personnel performing the functions specified above.

(Approved by the Office of Management and Budget under control number 0960-0385)

[50 FR 40142, Oct. 1, 1985, as amended at 51 FR 37732, Oct. 24, 1986]

§ 305.41 Recovery of direct payments.

For the purposes of this part, to be found in compliance with the State plan requirement for recovery of direct payments (45 CFR 302.31(a)), a State must:

(a) Have written procedures to:

(1) Notify the IV-A agency whenever a determination is made that directly received payments have been retained if the State elects the IV-A recovery method; or

(2) Recover retained direct support payments in accordance with the standards in § 303.80 of this chapter if the State elects the IV-D recovery method.

(b) Use the written procedures specified above.

(c) Have personnel performing the functions specified above.

(Approved by the Office of Management and Budget under control number 0960-0385)

[50 FR 40142, Oct. 1, 1985, as amended at 51 FR 37732, Oct. 24, 1986]

§ 305.42 Spousal support.

For the purposes of this part, to be found in compliance with the State plan provision for the collection of spousal support (45 CFR 302.31(a)), a State must:

(a) Have written procedures for the collection of spousal support from a legally liable person when:

(1) A support order has been established for the spouse;

(2) The spouse or former spouse is living with the child(ren) for whom the individual is liable for child support; and

(3) The support order established for the child(ren) is being enforced under the IV-D plan.

(b) Use the written procedures specified above.

(c) Have personnel performing the functions specified above.

(Approved by the Office of Management and Budget under control number 0960-0385)

[50 FR 40142, Oct. 1, 1985, as amended at 51 FR 37732, Oct. 24, 1986]

§ 305.43 90 percent Federal financial participation for computerized support enforcement systems.

For the purposes of this part, to be found in compliance with the State plan requirement for the establishment of a computerized support enforcement system eligible for 90 percent Federal financial participation (45 CFR 302.85), a State's system must meet the requirements in § 307.10 of this chapter.

[50 FR 40143, Oct. 1, 1985]

§ 305.44 Publicizing the availability of support enforcement services.

For the purposes of this part, to be found in compliance with the State plan requirement for publicizing the availability of support enforcement services (45 CFR 302.30), a State must publicize regularly and frequently the availability of support enforcement services under the State plan through public service announcements that include.

(a) Information on any application fees imposed for such services; and

(b) A telephone number or postal address where further information may be obtained.

(Approved by the Office of Management and Budget under control number 0960-0385)

[50 FR 40143, Oct. 1, 1985, as amended at 51 FR 37732, Oct. 24, 1986]

§ 305.45 Notice of collection of assigned support.

For the purposes of this part, to be found in compliance with the State plan requirement for providing notice of collection of assigned support (45 CFR 302.54), a State must:

(a) Have written procedures for:

(1) Sending, at least annually, a notice of the amount of support payments collected during the past year to individuals who have assigned rights to support under § 232.11 of this title; and

(2) Listing separately in the notice support payments collected from each absent parent when more than one absent parent owes support to the family; and

(3) Indicating in the notice the amount of support collected which was paid to the family.

(b) Use the written procedures specified above.

(c) Have personnel performing the functions specified above.

(Approved by the Office of Management and Budget under control number 0960-0385)

[50 FR 40143, Oct. 1, 1985, as amended at 51 FR 37732, Oct. 24, 1986]

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§ 305.46 Incentive payments to States and political subdivisions.

For the purposes of this part, to be found in compliance with the State plan requirement for incentive payments to States and political subdivisions (45 CFR 302.55), the State must:

(a) Have written procedures:

(1) To require that, if one or more political subdivisions of the State participate in the costs of carrying out the activities under the State plan during any period, each such subdivision shall be paid an appropriate share of any incentive payments made to the State for such period, as determined by the State in accordance with § 303.52(d) of this chapter, and

(2) To consider the efficiency and effectiveness of the political subdivision in carrying out the activities under the State plan in determining the amount of the incentive payments made to the political subdivision.

(b) Use the written procedures specified above.

(c) Have personnel performing the functions specified above.

(Approved by the Office of Management and Budget under control number 0960-0385)

[50 FR 40143, Oct. 1, 1985, as amended at 51 FR 37732, Oct. 24, 1986]

§ 305.47 Guidelines for setting child support awards.

For the purposes of this part, to be found in compliance with the State plan requirement for guidelines for setting child support awards (45 CFR 302.56), a State must:

(a) Establish guidelines by law or by judicial or administrative action for setting child support award amounts within the State;

(b) Have procedures for making the guidelines available to all persons in the State whose duty it is to set child support award amounts, but the guidelines need not be binding on those persons;

(c) Base the guidelines on specific descriptive and numeric criteria that result in a computation of the support obligation; and

(d) Include a copy of the guidelines in its State plan.

(Approved by the Office of Management and Budget under control number 0960-0385)

[50 FR 40143, Oct. 1, 1985, as amended at 51 FR 37732, Oct. 24, 1986]

§ 305.48 Payment of support through the IV-D agency or other entity.

For purposes of this part, to be found in compliance with the optional State plan provision for payment of support through the IV-D agency or other entity (45 CFR 302.57), a State must:

(a) Have written procedures for the payment of support through the State IV-D agency or entity designated to administer the State's withholding system upon request of either the absent parent or custodial parent, regardless of whether or not arrearages exist or withholding procedures have been instituted;

(b) Have written procedures to:

(1) Monitor all amounts paid and dates of payments and record them on an individual payment record;

(2) Ensure prompt payment to the custodial parent; and

(3) Require the requesting parent to pay a fee for the cost of providing the service not to exceed $25 annually and not to exceed State costs;

(c) Use the written procedures specified above; and

(d) Have personnel performing the functions specified above.

(Approved by the Office of Management and Budget under control number 0960-0385)

[50 FR 40143, Oct. 1, 1985, as amended at 51 FR 37732, Oct. 24, 1986]

§ 305.49 Wage or income withholding.

For the purposes of this part, to be found in compliance with the State plan requirement for wage or income withholding (45 CFR 302.70(a)(1)), a State must:

(a) Have written procedures for carrying out a program of withholding in accordance with § 303.100 of this chapter;

(b) Use the written procedures specified above; and

(c) Have personnel performing the functions specified above.

(Approved by the Office of Management and Budget under control number 0960-0385)

[50 FR 40143, Oct. 1, 1985, as amended at 51 FR 37732, Oct. 24, 1986]

§ 305.50 Expedited processes.

For the purposes of this part, to be found in compliance with the State plan requirement for expedited process (45 CFR 302.70(a)(2)), a State must:

(a) Have written expedited procedures to establish and enforce child support obligations having the same force and effect as those established through full judicial process in accordance with § 303.101 of this chapter;

(b) Use the written procedures specified above; and

(c) Have personnel performing the functions specified above.

(Approved by the Office of Management and Budget under control number 0960-0385)

[50 FR 40143, Oct. 1, 1985, as amended at 51 FR 37732, Oct. 24, 1986]

§ 305.51 Collection of overdue support by State income tax refund offset.

For the purposes of this part, to be found in compliance with the State plan requirement for collection of overdue support by State income tax refund offset (45 CFR 302.70(a)(3)), a State must:

(a) Have written procedures for obtaining overdue support from State income tax refunds on behalf of recipients of aid under the State's title IV-A or IV-E plan with respect to whom an assignment under § 232.11 of this title or section 471(a)(17) of the Act is effective, and on behalf of individuals who apply for services under §302.33 of this part, in accordance with § 303.102 of this chapter;

(b) Use the written procedures specified above; and

(c) Have personnel performing the functions specified above.

(Approved by the Office of Management and Budget under control number 0960-0385)

[50 FR 40143, Oct. 1, 1985, as amended at 51 FR 37732, Oct. 24, 1986]

§ 305.52 Imposition of liens against real and personal property.

For the purposes of this part, to be found in compliance with the State plan requirement for the imposition of liens against real and personal property (45 CFR 302.70(a)(4)), a State must:

(a) Have written procedures for the imposition of liens against the real and personal property of absent parents who owe overdue support in accordance with § 303.103 of this chapter;

(b) Use the written procedures specified above; and

(c) Have personnel performing the functions specified above.

(Approved by the Office of Management and Budget under control number 0960-0385)

[50 FR 40143, Oct. 1, 1985, as amended at 51 FR 37732, Oct. 24, 1986]

§ 305.53 Posting security, bond or guarantee to secure payment of overdue support.

For the purposes of this part, to be found in compliance with the State plan requirement for posting security, bond or guarantee to secure payment of overdue support (45 CFR 302.70(a)(6)), a State must:

(a) Have written procedures which require that an absent parent give security, post a bond, or give some other guarantee to secure payment of support in accordance with § 303.104 of this chapter;

(b) Use the written procedures specified above; and

(c) Have personnel performing the functions specified above.

(Approved by the Office of Management and Budget under control number 0960-0385)

[50 FR 40144, Oct. 1, 1985; 50 FR 49392, Dec. 2, 1985, as amended at 51 FR 37732, Oct. 24, 1986]

§ 305.54 Making information available to consumer reporting agencies.

For the purposes of this part, to be found in compliance with the State plan requirement for making information available to consumer reporting agencies (45 CFR 302.70(a)(7)), a State must:

(a) Have written procedures for making information regarding the amount of overdue support owed by an absent parent available to consumer reporting agencies in accordance with § 303.105 of this chapter;

(b) Use the written procedures specified above; and

(c) Have personnel performing the functions specified above.

(Approved by the Office of Management and Budget under control number 0960-0385)

[50 FR 40144, Oct. 1, 1985; 50 FR 49392, Dec. 2, 1985, as amended at 51 FR 37732, Oct. 24, 1986]

§ 305.55 Imposition of late payment fees on absent parents who owe overdue support.

For the purposes of this part, to be found in compliance with the optional State plan provision for imposing late payment fees on absent parents who owe overdue support (45 CFR 302.75), a State must:

(a) Have written procedures for uniformly applying the late payment fee in accordance with § 302.75 of this chapter;

(b) Use the written procedures specified above; and

(c) Have personnel performing the functions specified above.

(Approved by the Office of Management and Budget under control number 0960-0385)

[50 FR 40144, Oct. 1, 1985, as amended at 51 FR 37732, Oct. 24, 1986]

§ 305.56 Medical support enforcement.

For the purposes of this part, to be found in compliance with the State plan requirement for medical support enforcement (45 CFR 302.80), a State must:

(a) Have written procedures to secure medical support information and secure and enforce medical support obligations in accordance with 45 CFR Part 306, Subpart B of this chapter;

(b) Use the written procedures specified above; and

(c) Have personnel performing the functions specified above.

(Approved by the Office of Management and Budget under control number 0960-0420)

[50 FR 41894, Oct. 16, 1985; 50 FR 49392, Dec. 2, 1985, as amended at 51 FR 37732, Oct. 24, 1986]

§ 305.57 Retroactive modification of child support arrearages.

For the purposes of this part, in order to be found in compliance with the State plan requirement to prohibit the retroactive modification of child support arrearages (45 CFR 302.70(a)(9)), a State must have in effect laws which provide that any payment or installment under any child support order is, on and after the date it is due, a judgment and be using procedures which prohibit retroactive modification of child support arrearages as provided in 45 CFR 303.106 of this chapter.

[54 FR 15765, Apr. 19, 1989]

§ 305.98 Performance indicators and audit criteria.

(a) Beginning with the fiscal year 1986 audit period, the Office will use the following performance indicators in determining whether each State has an effective IV-D program.

(1) AFDC IV-D collections divided by total IV-D expenditures (less laboratory cost incurred in determining paternity at State option);

(2) Non-AFDC IV-D collections divided by total IV-D expenditures (less laboratory costs incurred in determining paternity at State option); and

(3) AFDC IV-D collections divided by IV-A assistance payments (Less payments to unemployed parents).

(b) Beginning with the fiscal year 1988 audit period, the Office will use the performance indicators prescribed in paragraph (a) of this section and the following performance indicators in determining whether each State has an effective IV-D program.

(1) AFDC IV-D collections on support due (for a fiscal year) divided by total AFDC support due (for the same fiscal year);

(2) Non-AFDC IV-D collections on support due (for a fiscal year) divided by total non-AFDC support due (for the same fiscal year);

(3) AFDC IV-D collections on support due (for prior periods) divided by

total AFDC support due (for the same periods); and

(4) Non-AFDC IV-D collection on support due (for prior periods) divided by total non-AFDC support due (for the same periods).

(c) The Office shall use the following procedures and audit criteria to measure State performance in fiscal years 1986 and 1987.

(1) The ratio for each of the performance indicators in paragraph (a) of this section will be evaluated on the basis of the scores in the tables in paragraphs (c)(1)(i) through (iii) of this section. The tables show the scores the States will receive for different levels of performance.

(i) Dollar of AFDC IV-D collections per dollar of total IV-D expenditures (less laboratory costs incurred in determining paternity at State option).

Level of performance	Score
$.00	0
$.01-$.09	2
$.10-$.19	4
$.20-$.29	6
$.30-$.39	8
$.40-$.49	10
$.50-$.59	12
$.60-$.69	14
$.70-$.79	16
$.80-$.89	18
$.90-$.99	20
$1.00-$1.19	22
$1.20-$1.39	24
$1.40 or more	25

(ii) Dollar of non-AFDC IV-D collections per dollar of total IV-D expenditures (less laboratory costs incurred in determining paternity at State option).

Level of performance	Score
$.00	0
$.01-$.09	4
$.10-$.19	8
$.20-$.29	12
$.30-$.39	16
$.40-$.49	20
$.50-$.59	24
$.60-$.69	28
$.70-$.79	32
$.80-$.89	36
$.90-$.99	40
$1.00-$1.19	44
$1.20-$1.39	48
$1.40 or more	50

(iii) AFDC IV-D collections divided by IV-A assistance payments (less payments to unemployed parents).

Level of performance (in percent)	Score
0 to 1.9 percent	0
2 to 3.9 percent	5
4 to 4.9 percent	10
5 to 5.9 percent	15
6 to 6.9 percent	20
7 or more	25

(2) To be found to meet the audit criteria, a State's total score must equal or exceed 70.

Examples. A State achieves levels of performance of $1.22, $1.35 and 6.5 percent on the performance indicators in paragraph (a) of this section. The State would receive individual scores of 24, 48 and 20 on these performance indicators. The State would be found to meet the audit criteria because the total score is 92.

A State achieves levels of performance of $.65, $.65 and 2.5 percent on the performance indicators in paragraph (a) of this section. The State would receive individual scores of 14, 28 and 5 on these performance indicators. The State would be found not to meet the audit criteria because the total score is 47.

A State achieves levels of performance of $.92, $.96 and 4.2 percent on the performance indicators in paragraph (a) of this section. The State would receive individual scores of 20, 40 and 10 on these performance indicators. The State would be found to meet the audit criteria because the total score is 70.

(d) Beginning in fiscal year 1988, the Office shall evaluate State performance according to the indicators in paragraphs (a) and (b) of this section on the basis of a scoring system that will be described and updated in regulation once every two years beginning in fiscal year 1987.

[50 FR 40144, Oct. 1, 1985; 50 FR 49392, Dec. 2, 1985]

§ 305.99 Notice and corrective action period.

(a) If a State is found by the Secretary on the basis of the results of the audit described in this part not to comply substantially with the requirements of title IV-D of the Act, as implemented by Chapter III of this title, the Office will notify the State in writing of such finding.

(b) The notice will:

(1) Cite the State for noncompliance, list the unmet audit criteria, apply a penalty and give the reasons for the Secretary's finding;

(2) Identify any audit criteria listed in § 305.20(a)(2), (b)(2) or (c)(2) of this part that the State met only marginally (that is, in 75 to 80 percent of the cases reviewed);

(3) Specify that the penalty may be suspended if the State meets the conditions specified in paragraph (c) of this section; and

(4) Specify the conditions that result in terminating the suspension of the penalty as specified in paragraph (d) of this section.

(c) The penalty will be suspended for a period not to exceed one year from the date of the notice if the following conditions are met:

(1) Within 60 days of the date of the notice, the State submits a corrective action plan to the appropriate Regional Office which contains a corrective action period not to exceed one year from the date of the notice and which contains steps necessary to achieve substantial compliance with the requirements of title IV-D of the Act;

(2) The corrective action plan and any amendment are:

(i) Approved by the Secretary within 30 days of receipt of the corrective action plan; or

(ii) Approved automatically because the Secretary took no action within the period specified in paragraph (c)(2)(i) of this section; and

(3) The Secretary finds that the corrective action plan (or any amendment to it approved by the Secretary) is being fully implemented by the State and that the State is progressing to achieve substantial compliance with the unmet criteria cited in the notice.

(d) The suspension of the penalty will continue until such time as the Secretary determines that:

(1) The State has achieved substantial compliance with the unmet criteria cited in the notice and maintained substantial compliance with any marginally-met criteria cited in the notice;

(2) During the corrective action period, the State is not implementing its corrective action plan; or

(3) The State has implemented its corrective action plan but has failed to achieve substantial compliance with the unmet criteria cited in the notice and maintain substantial compliance with any marginally-met criteria cited in the notice. For State plan-related criteria, this determination will be made as of the first full three-month period after the corrective action period. For performance indicator-related criteria, this determination will be made as of the first full four quarters following the end of the corrective action period.

(e) A corrective action plan disapproved under paragraph (c) of this section is not subject to appeal.

(f) Only one corrective action period is provided to a State in relation to a given criterion when consecutive findings of noncompliance are made on that criterion.

(Approved by the Office of Management and Budget under control number 0960-0385)

[50 FR 40145, Oct. 1, 1985; 50 FR 49392, Dec. 2, 1985, as amended at 51 FR 37732, Oct. 24, 1986; 55 FR 8468, Mar. 8, 1990]

§ 305.100 Penalty for failure to have an effective support enforcement program.

(a) If the Secretary finds, on the basis of the results of the audit described in this part, that a State's program does not substantially meet the requirements in title IV-D of the Act, as implemented by Chapter III of this title, and the State does not achieve substantial compliance with those requirements identified in the notice within the corrective action period approved by the Secretary under § 305.99(c) of this part and maintain compliance in areas cited in the notice as marginally acceptable under § 305.99(b)(2) of this part, total payments to the State under title IV-A of the Act will be reduced for the period prescribed in paragraph (c) or (d) of this section by:

(1) Not less than one nor more than two percent of such payments for a period beginning in accordance with paragraph (c) or (d) of this section not

to exceed the one-year period following the end of the suspension period;

(2) Not less than two nor more than three percent of such payments if the finding is the second consecutive finding made as a result of an audit for a period beginning as of the second one-year period following the suspension period not to exceed one year; or

(3) Not less than three nor more than five percent of such payments if the finding is the third or subsequent consecutive finding as a result of an audit for a period beginning as of the third one-year period following the suspension period.

(b) In the case of a State that has achieved substantial compliance with the unmet criteria identified in the notice and maintained substantial compliance with any marginally-met criteria identified in the notice within the corrective action period approved by the Secretary under § 305.99 of this part, the penalty will not be applied.

(c) In the case of a State whose penalty suspension ends because the State is not implementing its corrective action plan, the penalty will be applied as if the suspension had not occurred.

(d) In the case of a State whose penalty suspension ends because the State is implementing its corrective action plan but has failed to achieve substantial compliance with the unmet criteria identified in the notice or maintain substantial compliance with any marginally-met criteria identified in the notice within the corrective action period approved by the Secretary under § 305.99 of this part, the penalty will be effective for any quarter that ends after the expiration of the suspension period until the first quarter throughout which the State IV-D program is in substantial compliance with the requirements of title IV-D of the Act.

(e) A consecutive finding under paragraph (a)(2) or (3) of this section occurs only when the State does not achieve substantial compliance with the same criterion or criteria.

(f) Any reduction required to be made under this section shall be made pursuant to § 205.146(d) of this title.

(g) The reconsideration of penalty imposition provided for by § 205.146(e) of this title shall be applicable to any reduction made pursuant to this section.

[50 FR 40145, Oct. 1, 1985; 50 FR 49392, Dec. 2, 1985; 55 FR 8468, Mar. 8, 1990]

PART 306—OPTIONAL COOPERATIVE AGREEMENTS FOR MEDICAL SUPPORT ENFORCEMENT

Sec.
306.0 Scope of this part.
306.2 Cooperative agreement.
306.10 Functions to be performed under a cooperative agreement.
306.11 Administrative requirements of cooperative agreements.
306.20 Prior approval of cooperative agreements.
306.21 Subsidiary cooperative agreements with courts and law enforcement officials.
306.22 Purchase of service agreements.
306.30 Source of funds.

AUTHORITY: 42 U.S.C. 652, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396(k).

SOURCE: 54 FR 32313, Aug. 4, 1989, unless otherwise noted.

§ 306.0 Scope of this part.

This part defines the requirements for an optional cooperative agreement between the IV-D agency and the Medicaid agency for the purpose of enforcing medical support obligations under section 1912 of the Act.

§ 306.2 Cooperative agreement.

The cooperative agreement between the IV-D agency and the Medicaid agency shall be a written agreement for the IV-D agency to assist the Medicaid agency by securing and enforcing the medical support obligation of an absent parent to a child for whom an assignment of medical support rights has been executed under 42 CFR 433.146. The functions that the IV-D agency may perform under the cooperative agreement are set forth in § 306.10. The administrative requirements are set forth at § 306.11.

§ 306.10 Functions to be performed under a cooperative agreement.

The functions that the IV-D agency may perform under a cooperative agreement with the Medicaid agency are limited to one or any combination of the following activities. The agency may:

(a) Receive referrals from the Medicaid agency.

(b) Locate the absent parent, using the State Parent Locator Service and the Federal Parent Locator Service, as needed.

(c) Establish paternity if necessary.

(d) Determine whether the parent has a health insurance policy or plan that covers the child.

(e) Obtain sufficient information about the health insurance policy or plan to permit the filing of a claim with the insurer.

(f) File a claim with the insurer; or transmit the necessary information to the Medicaid agency, or to the appropriate State agency or fiscal agent for the filing of the claim; or require the absent parent to file a claim.

(g) Secure health insurance coverage through court or administrative order.

(h) Take direct action against the absent parent to recover amounts necessary to reimburse medical assistance payments when the absent parent does not have health insurance and the amounts collected will not reduce the absent parent's ability to pay child support.

(i) Receive medical support collections.

(j) Distribute the collections as required by 42 CFR 433.154 including calculation and payment of the incentives provided for by 42 CFR 433.153.

(k) Perform other functions as may be specified by instructions issued by the Office of Child Support Enforcement.

§ 306.11 Administrative requirements of cooperative agreements.

(a) *Organizational structure.* The cooperative agreement must:

(1) Describe the organizational structure of the unit or units within the IV-D agency that are responsible for medical support enforcement activities.

(2) List the medical support enforcement functions that are to be performed outside of the IV-D agency with the name of the organization responsible for performance.

(3) Provide that the IV-D agency shall have responsibility for securing compliance with the requirements of the cooperative agreement by individuals or agencies outside the IV-D agency performing medical support enforcement functions.

(b) *Maintenance of records.* The cooperative agreement must specify that the IV-D agency will establish and maintain case records of medical support enforcement activities in accordance with the provisions of § 302.15 of this chapter.

(c) *Safeguarding information.* The cooperative agreement must provide that the use or disclosure of information concerning applicants for, or recipients of, medical support enforcement services is subject to the limitations in § 303.21 of this chapter.

(d) *Fiscal policies and accountability.* (1) The cooperative agreement must provide that the IV-D agency will maintain an accounting system and supporting fiscal records adequate to assure that claims for reimbursement from the Medicaid agency are in accordance with applicable Federal requirements in 45 CFR Part 74.

(2) The cooperative agreements must provide for the establishment of a method for properly allocating those costs that cannot be directly charged to the medical support enforcement effort.

§ 306.20 Prior approval of cooperative agreements.

(a) Prior to implementation, the IV-D agency must submit two copies of any cooperative agreement entered into under this part to the Regional Representative for approval.

(b) The Regional Representative will review the cooperative agreement for conformity with the requirements of this part and 42 CFR 433.152.

(c) The Regional Representative will promptly notify the State of approval or disapproval. The State may consider the agreement approved if notification is not received within 60 days after the agreement is received by the Regional Representative.

§ 306.21 Subsidiary cooperative agreements with courts and law enforcement officials.

The IV-D agency will enter into subsidiary written cooperative agreements with appropriate courts and law enforcement officials to the extent necessary to perform those functions specified in the cooperative agreement between the IV-D agency and the Medicaid agency. These agreements must be made in accordance with the requirements of § 302.34 (Cooperative agreements).

§ 306.22 Purchase of service agreements.

The IV-D agency will enter into written purchase of service agreements to the extent necessary to fulfill the requirements of its cooperative agreement with the Medicaid agency.

§ 306.30 Source of funds.

The cooperative agreement must specify that the IV-D agency will receive full reimbursement from the Medicaid agency for all medical support enforcement activities performed under the agreement. (See § 306.11(d) for requirements on fiscal policies and accountability.)

PART 307—COMPUTERIZED SUPPORT ENFORCEMENT SYSTEMS

Sec.

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307.10 Computerized support enforcement systems.
307.15 Approval of advance planning documents for computerized support enforcement systems eligible for 90 percent FFP.
307.20 Submittal of advance planning documents for computerized support enforcement systems eligible for 90 percent FFP.
307.25 Review of computerized support enforcement systems eligible for 90 percent FFP.
307.30 Federal financial participation at the 90 percent rate for computerized support enforcement systems.
307.35 Federal financial participation at the applicable matching rate for computerized support enforcement systems.
Sec.
307.40 Suspension of approval of advance planning documents for computerized support enforcement systems eligible for 90 percent FFP.

AUTHORITY: 42 U.S.C. 652 through 658, 664, 666, 667 and 1302.

SOURCE: 49 FR 33260, Aug. 22, 1984, unless otherwise noted.

§ 307.0 Scope of this part.

This part implements sections 452 (d) and (e), 454(16) and 455(a) of the Act which prescribe:

(a) The requirements that a computerized support enforcement system must meet in order to be eligible for Federal financial participation (FFP) at the 90 percent rate;

(b) The criteria the Office must determine exist prior to approving an advance planning document (APD) for a system funded at 90 percent FFP;

(c) The requirements and procedures for the submittal of an APD;

(d) The requirement for a continuous review of each approved computerized support enforcement system funded at the 90 percent rate;

(e) The availability of FFP at the 90 percent rate for the costs of developing, implementing and enhancing a computerized support enforcement system;

(f) The availability of FFP at the applicable matching rate for systems activities; and

(g) The conditions under which the Office will suspend approval of an APD for systems funded at 90 percent rate.

[49 FR 33260, Aug. 22, 1984, as amended by 50 FR 19657, May 9, 1985]

§ 307.1 Definitions.

(a) "Computerized support enforcement system" means a system of software and hardware (that may have State and local components) which:

(1) Introduces, processes, accounts for and monitors data used by the Child Support Enforcement program in carrying out activities under the State plan; and

(2) Produces utilization and management information about support enforcement services as required by the State IV-D agency and Federal gov-

ernment for program administration and audit purposes.

(b) "Planning" means:

(1) The preliminary project activity to determine the requirements necessitating the project, the activities to be undertaken, and the resources required to complete the project;

(2) The preparation of an APD;

(3) The preparation of a detailed project plan describing when and how the computer system will be designed and developed; and

(4) The preparation of a detailed implementation plan describing specific training, testing, and conversion plans to install the computer system.

(c) The following terms are defined at 45 CFR part 95, subpart F, § 95.605:

"Advance Planning Document";
"Annually updated APD";
"Design" or "System Design";
"Development";
"Initial APD";
"Installation";
"Operation";
"Requirements Analysis"; and,
"Software".

(d) The definitions found in § 301.1 of this chapter are also applicable to this part.

[51 FR 45330, Dec. 18, 1986, as amended at 55 FR 4379, Feb. 7, 1990]

§ 307.10 Computerized support enforcement systems.

(a) At a minimum, each State's computerized support enforcement system established under the title IV-D State plan at § 302.85 of this chapter must:

(1) Be planned, designed, developed, installed or enhanced in accordance with an initial and annually updated APD approved under § 307.15 of this part; and

(2) Control, account for, and monitor all the factors in the support collection and paternity determination processes under the State plan. At a minimum this must include:

(i) Maintaining identifying information such as social security numbers, names, dates of birth, home addresses and mailing addresses (including postal zip codes) on individuals against whom support obligations are sought to be established or enforced and on individuals to whom support obligations are owed, and other data as required by the Office, and assuring compatibility with the systems of different jurisdictions to permit periodic screening to determine whether an individual is paying or is obligated to pay support in more than one jurisdiction;

(ii) Periodically verifying the information on individuals referred to in paragraph (a)(2)(i) of this section with Federal, State and local agencies, both intrastate and interstate;

(iii) Maintaining data necessary to meet Federal reporting requirements on a timely basis as prescribed by the Office;

(iv) Maintaining information pertaining to:

(A) Delinquency and enforcement activities;

(B) Intrastate, interstate and Federal location of absent parents;

(C) The establishment of paternity; and

(D) The establishment of support obligations;

(v) Collecting and distributing both intrastate and interstate support payments;

(vi) Determining, collecting and distributing both intrastate and interstate incentive payments;

(vii) Maintaining accounts receivable on all amounts owed, collected, and distributed;

(viii) Maintaining costs of all services rendered, either directly or by interfacing with State financial management and expenditure information;

(ix) Accepting case referrals and update information from the State's Aid to Families with Dependent Children (AFDC) program and using that information to identify and manage support enforcement cases;

(x) Interfacing with records of the State's AFDC program in order to determine whether a collection of support causes a change in eligibility for, or the amount of aid under, the AFDC program;

(xi) Providing security to prevent unauthorized access to, or use of, the data in the system;

(xii) Providing management information of all IV-D cases, both AFDC and non-AFDC, under the State plan from initial referral or application through collection and enforcement; and

(xiii) Ensuring compatibility with the State Medicaid system to provide for the transfer of the medical support information specified in §§303.30 and §§303.31.

(b) Effective October 1, 1984, a State computerized support enforcement system established under paragraph (a) of this section may facilitate the development and improvement of the income withholding and other procedures required under section 466(a) of the Act and § 302.70 and §§ 303.100 through 303.105 of this chapter through:

(1) The monitoring of support payments;

(2) The maintenance of accurate records of support payments; and

(3) The prompt notice to appropriate officials of any support arrearages.

(Approved by the Office of Management and Budget under control number 0960-0344)

[49 FR 33260, Aug. 22, 1984, as amended at 50 FR 19657, May 9, 1985; 51 FR 37732, Oct. 24, 1986; 54 FR 32314, Aug. 4, 1989]

§ 307.15 Approval of advance planning documents for computerized support enforcement systems eligible for 90 percent FFP.

(a) *Approval of an APD.* The Office shall not approve the initial and annually updated APD unless the document, when implemented, will carry out the requirements of § 307.10(a) of this part and the optional provision in § 307.10(b) of this part when elected by the State. Conditions for APD approval are specified in this section.

(b) *Conditions for initial approval.* In order to be approvable, an initial APD for a computerized support enforcement system described under § 307.10 must meet the following requirements:

(1) The APD must represent the sole systems effort being undertaken by the State in accordance with § 307.10;

(2) The APD must specify how the objectives of the computerized support enforcement system in § 307.10 will be carried out throughout the State; this includes a projection of how the proposed system will meet the functional requirements of § 307.10(a) and the functional requirements of § 307.10(b) when elected by the State and how the system will encompass all political subdivisions in the State within a reasonable period of time;

(3) The APD must assure the feasibility of the proposed effort and provide for the conduct of a requirements analysis study which addresses all system components within the State and includes consideration of the program mission, functions, organization, services, constraints, and current support related to the computerized support enforcement system;

(4) The APD must indicate how the results of the requirements analysis study will be incorporated into the proposed system design, development, installation or enhancement;

(5) The APD must contain a description of each component within the proposed computerized support enforcement system as required by § 307.10(a) and the optional component of § 307.10(b) when elected by the State and must describe information flows, input data, and output reports and uses;

(6) The APD must describe the security requirements to be employed in the proposed computerized support enforcement system;

(7) The APD must describe the intrastate and interstate interfaces set forth in § 307.10(a) to be employed in the proposed computerized support enforcement system;

(8) The APD must describe the projected resource requirements for staff, hardware, and other needs and the resources available or expected to be available to meet the requirements;

(9) The APD must contain a proposed budget including a description of estimated expenditures by category and amount for:

(i) Items that are eligible for Federal funding at the 90 percent rate; and

(ii) Items related to operating the system that are eligible for Federal funding at the applicable matching rate;

(10) The APD must contain an implementation plan and backup procedures to handle possible failures in system planning, design, development, installation or enhancement;

(11) The APD must describe each alternative system considered including the advantages of the proposed system over the alternatives; if a Model system or a State system that the Office has identified for consideration by State IV-D agencies in not proposed, these systems must be among the alternatives considered; if a system that is already in place in the State could be enhanced to meet the requirements for 90 percent FFP, that system must be among the alternatives considered;

(12) The APD must contain a cost benefit analysis of the proposed computerized support enforcement system that describes the proposed improvements to the IV-D program in both qualitative and quantitative terms;

(13) The APD must specify the basis for determining direct and indirect costs of the computerized support enforcement system during development and operation, including the methodology for determining costs of planning, design, development, installation or enhancement that are eligible for 90 percent Federal funding versus costs of operations that are eligible for 70 percent Federal funding; and

(14) The APD must contain a statement indicating the period of time the State expects to use the proposed computerized support enforcement system.

(c) *Conditions for approval of annual update.* The APD for a computerized support enforcement system described under § 307.10 must be updated annually. In order to be approvable, the annual update of an APD for a computerized support enforcement system described under § 307.10 must meet only those requirements of paragraph (b) of this section that are prescribed by instructions issued by the Office.

(Approved by the Office of Management and Budget under control number 0960-0343)

[49 FR 33260, Aug. 22, 1984, as amended at 50 FR 19657, May 9, 1985; 51 FR 37732, Oct. 24, 1986; 55 FR 4379, Feb. 7, 1990]

§ 307.20 Submittal of advance planning documents for computerized support enforcement systems eligible for 90 percent FFP.

The State IV-D agency must submit an APD for a computerized support enforcement system, approved and signed by the State IV-D Director and the appropriate State official, in accordance with the submission process prescribed in 45 CFR part 95, subpart F.

[55 FR 4379, Feb. 7, 1990]

§ 307.25 Review of computerized support enforcement systems eligible for 90 percent FFP.

The Office will on a continuous basis review, assess and inspect the planning, design, development, installation, enhancement and operation of computerized support enforcement systems developed under § 307.10 of this part to determine the extent to which such systems:

(a) Meet the requirements found in § 307.15 of this part; and

(b) Meet the conditions in § 307.10(a) and the optional provision of § 307.10(b) when elected by the State.

[49 FR 33260, Aug. 22, 1984, as amended at 50 FR 19657, May 9, 1985]

§ 307.30 Federal financial participation at the 90 percent rate for computerized support enforcement systems.

(a) *Conditions that must be met for FFP.* Federal financial participation is available at the 90 percent rate in expenditures for the planning, design, development, installation or enhancement of a computerized support enforcement system as described in § 307.10 of this part if:

(1) The Office has approved an APD in accordance with § 307.15 of this part;

(2) The Office determines:

(i) The system meets the requirements specified in § 307.10(a); or

(ii) The system meets the requirements specified in § 307.10(a) and the optional provisions in § 307.10(b).

(3) The Office determines that the expenditures incurred are consistent with the approved APD;

(4) The Office determines that the computerized support enforcement system is designed effectively and efficiently and will improve the management and administration of the State IV-D plan;

(5) The State IV-D agency agrees in writing to use the system for a period of time which is consistent with the APD approved by the Office, or for any shorter period of time which the Office determines is sufficient to justify the Federal funds invested; and

(6) The State or local government has ownership rights in software, software modifications and associated documentation that is designed, developed, installed, or enhanced with 90 percent FFP under this section subject to the Department of Health and Human Services license specified in paragraph (c) of this section.

(b) *Reimbursement of hardware and proprietary software.* (1) Effective October 1, 1984, FFP at the 90 percent rate is available in expenditures for the rental or purchase of hardware for the planning, design, development, installation, enhancement or operation of a computerized support enforcement system as described in § 307.10 (a) or § 307.10 (a) and (b).

(2) Effective October 1, 1984, FFP at the 90 percent rate is available in expenditures for the rental or purchase of proprietary operating/vendor software necessary for the operation of hardware during the planning, design, development, installation, enhancement or operation of a computerized support enforcement system in accordance with the Computerized Support Enforcement System (CSES) Guide for enhanced FFP. FFP at the 90 percent rate is not available for proprietary application software developed specifically for a computerized support enforcement system. (See § 307.35 of this part regarding reimbursement at the applicable matching rate.)

(c) *HHS rights to software.* The Department of Health and Human Services reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use for Federal government purposes, software, software modifications, and documentation developed under § 307.10. This license would permit the Department to authorize the use of software, software modifications and documentation developed under § 307.10 in another project or activity funded by the Federal government.

(d) *Consequences of suspension of the APD.* If the Office suspends approval of an APD in accordance with § 307.40 of this part during the planning design, development, installation, enhancement or operation of the system:

(1) The Office shall disallow FFP as of the date the State failed to comply substantially with the approved APD; and

(2) FFP at the 90 and applicable matching rates is not available in any expenditures incurred under the APD after the date of the suspension until the date the Office determines that the State has taken the actions specified in the notice of suspension described in § 307.40(a)(2) of this part. The Office will notify the State in writing upon making such a determination. (See § 307.35(b) regarding reimbursement for disallowed expenditures under Part 95, Subpart F of this title.)

[49 FR 33260, Aug. 22, 1984, as amended at 50 FR 19657, May 9, 1985; 50 FR 31720, Aug. 6, 1985; 55 FR 4379, Feb. 7, 1990]

§ 307.35 Federal financial participation at the applicable matching rate for computerized support enforcement systems.

Federal financial participation at the applicable matching rate is available only in computerized support enforcement systems expenditures for:

(a) The operation of a system that meets the requirements specified in § 307.10(a) of this part and the optional provision of § 370.10(b) when elected by the State if the conditions for ADP approval in § 307.15 of this part are met; or

(b) Systems approved in accordance with Part 95, Subpart F of this title. This may include expenditures for a system which were disallowed by the Office because the system failed to comply substantially with an APD approved under § 307.15.

[49 FR 33260, Aug. 22, 1984, as amended at 50 FR 19658, May 9, 1985]

§ 307.40 Suspension of approval of advance planning documents for computerized support enforcement systems eligible for 90 percent FFP.

(a) *Suspension of approval.* (1) The Office will suspend approval of the APD for a computerized support enforcement system approved and developed under § 307.10 of this part as of the date that the system ceases to comply substantially with the criteria, requirements, and other provisions in the APD. Federal funding will be disallowed as described in § 307.30(d) of this part.

(2) The Office will immediately notify the State in writing of the decision to suspend approval of the APD. The notice will give the reasons for and effective date of the suspension and specify the actions required for the State to receive Federal funding in the future for its systems activities.

(b) *Duration of suspension.* The suspension of approval of an APD under paragraph (a) shall remain in effect until the Office determines that actions required for Federal funding in the future, as specified in the notice of suspension, have been taken and the Office so notifies the State.

PARTS 308—399 [RESERVED]

CHAPTER IV—OFFICE OF REFUGEE RESETTLEMENT, FAMILY SUPPORT ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES

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AUTHORITY: Sec. 412(a)(9), Immigration and Nationality Act (8 U.S.C. 1522(a)(9).

SOURCE: 45 FR 59323, Sept. 9, 1980 unless otherwise noted.

Subpart A—Introduction

§ 400.1 Basis and purpose of the program.

(a) This part prescribes requirements concerning grants to States under title IV of the Immigration and Nationality Act.

(b) It is the purpose of this program to provide for the effective resettlement of refugees and to assist them to achieve economic self-sufficiency as quickly as possible.

(c) Under the authority in section 412(a)(6)(B) of the Immigration and Nationality Act, the Director has established the provision of employment services and English language training as a priority in accomplishing the purpose of this program.

[51 FR 3912, Jan. 30, 1986]

§ 400.2 Definitions.

The following definitions are applicable for purposes of this part:

"AABD" means aid to the aged, blind, and disabled under title XVI of the Social Security Act.

"AB" means aid to the blind under title X of the Social Security Act.

"Act" means the Immigration and Nationality Act.

"AFDC" means aid to families with dependent children under title IV-A of the Social Security Act.

"APTD" means aid to the permanently and totally disabled under title XIV of the Social Security Act.

"Case management services" means the determination of which service(s) to refer to a refugee to, referral to such service(s), and tracking of the refugee's participation in such service(s).

"Cash assistance" means financial assistance to refugees, including AFDC, SSI, refugee cash assistance, and general assistance, as defined herein, under title IV of the Act.

"Director" means the Director, Office of Refugee Resettlement.

"Federal Funding" or 'FF" means Federal funding for a State's expenditures under the refugee resettlement program.

"General assistance program" means a financial and/or medical assistance program existing in a State or local jurisdiction which: (a) Is funded entirely by State and/or local funds; (b) is generally available to needy persons residing in the State or locality who meet specified income and resource requirements; and (c) consists of one-time emergency, or ongoing assistance intended to meet basic needs of recipients, such as food, clothing, shelter, medical care, or other essentials of living.

"HHS" means the Department of Health and Human Services.

"Medical assistance" means medical services to refugees, including Medicaid, refugee medical assistance, and general assistance, as defined herein, under title IV of the Act.

"OAA" means old age assistance under title I of the Social Security Act.

"ORR" means the Office of Refugee Resettlement.

"Plan" means a written description of the State's refugee resettlement program and a commitment by the State to administer or supervise the administration of the program in accordance with Federal requirements in this part.

"Refugee" means an individual who meets the definitions of a refugee under section 101(a)(42) of the Act.

"Refugee cash assistance" ("RCA") means cash assistance provided under section 412(e) of the Act to refugees who are ineligible for AFDC, OAA, AB, APTD, AABD, or SSI and who have resided in the United States for less than a 12-month period from their initial entry into the country.

"Refugee medical assistance" ("RMA") means: (a) Medical assistance provided under section 412(e) of the Act to refugees who are ineligible for the Medicaid program and who have resided in the United States for less than a 12-month period from their initial entry into the country; and (b) services provided in accordance with §§ 400.106 and 400.107 of this part.

"Secretary" means the Secretary of HHS.

"Sponsor" means an individual, church, civic organization, State or local government, or other group or organization which has agreed to help in the reception and initial placement of refugees in the United States.

"SSI" means supplemental security income under title XVI of the Social Security Act.

"State" means the 50 States, the District of Columbia, Guam, Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, and the Trust Territories of the Pacific.

"State agency" means the agency (or agencies) designated by the Governor or the appropriate legislative authority of the State to develop and administer, or supervise the administration of, the plan and includes any local agencies administering the plan under supervision of the State agency.

"State Coordinator" means the individual designated by the Governor or the appropriate legislative authority of the State to be responsible for, and who is authorized to, ensure coordination of public and private resources in refugee resettlement.

"Support services" means services provided or contracted for by a State, which are designed to meet resettlement needs of refugees, for which funding is available under title IV of the Act.

"Time-eligibility" means the period for which FF (Federal funding) is provided under §§ 400.203(a) and 400.204(a) of this part, after applying the limitation "[s]ubject to the availability of funds" in accordance with § 400.202.

"Title IV of the Act" means title IV, Chapter 2, of the Immigration and Nationality Act.

"Voluntary resettlement agency" or "voluntary agency" or "resettlement agency" means one of the national resettlement agencies (or its local affiliate or subcontractor) or a State or local government that has entered into a grant, contract, or cooperative agreement with the United States Department of State or other appropriate Federal agency to provide for the reception and initial placement of refugees in the United States.

[51 FR 3912, Jan. 30, 1986 as amended at 53 FR 32224, Aug. 24, 1988; 54 FR 5475, Feb. 3, 1989]

§ 400.3 [Reserved]

Subpart B—Grants to States for Refugee Resettlement

THE STATE PLAN

§ 400.4 Purpose of the plan.

(a) In order for a State to receive refugee resettlement assistance from funds appropriated under section 414 of the Act, it must submit to ORR a plan that meets the requirements of title IV of the Act and of this part and that is approved under § 400.8 of this part.

(b) An approved plan continues in effect until the State expressly amends or revokes the plan or ORR notifies the State in accordance with section 400.8 of this part that the plan no longer meets the requirements of title IV of the Act and of this part.

[51 FR 3912, Jan. 30, 1986]

§ 400.5 Content of the plan.

The plan must:

(a) Provide for the designation of, and describe the organization and functions of, a State agency (or agencies) responsible for developing the plan and administering, or supervising the administration of, the plan;

(b) Describe how the State will coordinate cash and medical assistance with support services to ensure their successful use to encourage effective refugee resettlement and to promote employment and economic self-sufficiency as quickly as possible.

(c) Describe how the State will ensure that language training and employment services are made available to refugees receiving cash assistance, and to other refugees, including State efforts to actively encourage refugee registration for employment services;

(d) Identify an individual designated by the Governor or the appropriate legislative authority of the State, with the title of State Coordinator, who is employed by the State and will have the responsibility and authority to ensure coordination of public and private resources in refugee resettlement in the State;

(e) Provide for, and describe the procedures established for, the care and supervision of, and legal responsibility (including legal custody and/or guardianship under State law, as appropriate) for, unaccompanied refugee children in the State;

(f) Provide for and describe (1) the procedures established to identify refugees who, at the time of resettlement in the State, are determined to have medical conditions requiring, or medical histories indicating a need for, treatment or observation, and (2) the procedures established to monitor any necessary treatment or observation;

(g) Provide that assistance and services funded under the plan will be provided to refugees without regard to race, religion, nationality, sex, or political opinion; and

(h) Provide that the State will, unless exempted from this requirement by the Director, assure that meetings are convened, not less often than quarterly, whereby representatives of local affiliates of voluntary agencies meet with representatives of State and local governments to plan and coordinate the appropriate placement of refugees in advance of the refugee' arrival.

(i) Provide that the State will: (1) Comply with the provisions of title IV of the Act and official issuances of the Director; (2) meet the requirements in this part; (3) comply with all other applicable Federal statutes and regulations in effect during the time that it is receiving grant funding; and (4) amend the plan as needed to comply with standards, goals, and priorities established by the Director.

(Approved by the Office of Management and Budget under control number 0960-0418)

[51 FR 3912, Jan. 30 1986]

§ 400.6 [Reserved]

§ 400.7 Submittal of the State plan and plan amendments for Governor's review.

A plan or plan amendment under title IV of the Act must be submitted to the State Governor or his or her designee, for review, comment, and signature before the plan is submitted to ORR.

[51 FR 3913, Jan. 30, 1986]

§ 400.8 Approval of State plans and plan amendments.

(a) The State agency must submit the State plan and plan amendments which have been signed by the Governor, or his or her designee, together with one copy of such plan or amendment, to the Director of ORR, or his or her designee, for approval. States are encouraged to consult with the Director, or his or her designee, when a plan or amendment is in preparation.

(b) The Director, or his or her designee, may initiate any necessary discussions with the State agency to clarify aspects of the plan.

(c) No later than 45 days after the State plan or plan amendment is submitted, the Director, or his or her designee, will—(1) Determine whether a State plan or plan amendment meets or continues to meet requirements for approval based on relevant Federal statutes and regulations, and (2) approve or disapprove the plan or plan amendment.

(d) The Director, or designee, will notify the State agency promptly of all actions taken on State plans and amendments.

(e) The effective date of an approved State plan or plan amendment may not be earlier than the first day of the calendar quarter in which the State agency submits the plan or plan amendment, except as otherwise approved by the Director.

[51 FR 3913, Jan. 30, 1986]

§ 400.9 Administrative review of decisions on approval of State plans and plan amendments.

(a) Any State dissatisfied with a determination by the Director, or his or her designee, under § 400.8 with respect to any plan or plan amendment may, within 60 days after the date of notification of such determination, file a petition with the Director, or designee, for reconsideration of the determination.

(b) A State may request that a hearing be held, but it is not required to do so.

(c) If a State requests a hearing, the Director, or designee, will notify the State within 30 days after receipt of such a petition, of the time and location of the hearing to reconsider the issue.

(d) The hearing must be held not less than 30 days nor more than 60 days after the date the notice of the hearing is furnished to the State, unless the Director, or designee, and the State agree in writing on another time.

(e) The hearing procedures in Part 213 of this title will be used except that:

(1) "The Director" is substituted where there is a reference to "the Administrator," and

(2) "ORR Hearing Clerk" is substituted where there is reference to the "SRS Hearing Clerk."

(f) The Director will affirm, modify, or reverse the original decisions within 60 days of the receipt of the State's petition or, if a hearing is held, within 60 days after the hearing.

(g) The initiable determination by the Director, or designee, that a plan or amendment is not approvable shall remain in effect pending the reconsideration.

(h) If the Director reverses the original decision, ORR will reimburse any funds incorrectly withheld or otherwise denied.

[51 FR 3913, Jan. 30, 1986]

§ 400.10 [Reserved]

AWARD OF GRANTS TO STATES

§ 400.11 Award of Grants to States.

(a) *Quarterly grants.* Subject to the availability of funds (and in accordance with the limitations of Subpart J of this part), ORR will make two types of quarterly grants to eligible States:

(1) *Grants for cash assistance, medical assistance, and related administrative costs ("CMA grants")*, for the following purposes: Cash assistance provided by a State or local public agency under the program of aid to families with dependent children (AFDC) under part A of title IV of the Social Security Act, under the adult assistance programs (AABD, AB, APTD, or OAA) in the territories, or under section 412(e) of the Immigration and Nationality Act; foster care maintenance provided under part E of title IV of the Social Security Act; State supplementary payments under section 1616(a) of the Social Security Act or section 212 of the Pub. L. 93-66; medical assistance under title XIX of the Social Security Act or under section 412(e) of the Immigration and Nationality Act; assistance and services to unaccompanied minors under section 412(d)(2)(B) of the Immigration and Nationality Act; and cash or medical assistance provided under a public assistance program established under authority other than Federal law and under which such assistance is generally available to needy individuals or families in similar circumstances within the State; and

(2) *Grants for social services, as set forth in this part.* ORR will compute the amount of the quarterly awards based on documents submitted by the State agency in accordance with this section and such other pertinent facts as the Director may find necessary.

(b) *Form and manner of State application for grant award*—(1) *CMA grants.* For quarterly grants for cash assistance, medical assistance, and related administrative costs, including assistance and services to unaccompanied minors ("CMA grants"), a State must submit to the Director, or designee, yearly estimates for reimbursable costs for the fiscal year, identified by type of expense, and a justification statement in support of the estimates no later then 45 days prior to the beginning of the fiscal year on a form prescribed by the Director.

(2) *Grants for refugee social services.* For quarterly grants for refugee social services, a State must submit to the Director, or designee, an annual plan no later than 45 days prior to the beginning of the State's annual planning cycle for social services on a form prescribed by the Director.

(3) *Quarterly adjustments.* If a State revises its quarterly estimates required in paragraph (b)(1), it must submit to the Director, or designee, the revisions, accompanied by a justification statement, no later than 30 days prior to the beginning of the quarter in which the revision or adjustment applies.

(c) *Financial status report.* A State must submit to the Director, or designee, a financial status report described in § 74.73(a) of this title, no later than 30 days after the end of each quarter, except for the final report for each fiscal year which shall be due 90 days after the end of the fiscal year.

(d) *Review.* ORR will determine whether the State's description of services, estimates, other relevant information, and any adjustments to be made for prior periods meet the requirements under this part, and will compute the quarterly award.

(e) *Grant award.* (1) ORR will transmit to the State the grant award form showing, by type of assistance, the amount of the award.

(2) The State may draw funds, under the Department's Payment Management System (PMS), as needed, to meet the Federal share of disbursements.

(Approved by the Office of Management and Budget under control number 0960-0418)

[51 FR 3913, Jan. 30, 1986, as amended at 54 FR 5475, Feb. 3, 1989]

§ 400.12 Adverse determinations concerning State grants.

(a) *Policy.* The Secretary has established a Departmental Grant Appeals Board for the purpose of reviewing and providing hearings on post-award disputes which may arise in the administration of certain grant programs by constituent agencies of HHS. Section 16.3(c) of this title mandates an appellant to exhaust any preliminary appeal process required by regulation before a formal appeal to the Board will be allowed. Paragraph (d) of this section provides an informal preliminary appeal process for resolution of such disputes within ORR prior to appeal to the Board.

(b) *Scope.* Adverse determinations to which this procedure is applicable are as follows:

(1) Termination, in whole or in part, of a grant for failure of the grantee to carry out its approved project or program in accordance with applicable law and the terms and conditions of such assistance or for failure of the grantee otherwise to comply with any law, regulation, assurance, term, or condition applicable to the grant.

(2) A determination that an expenditure not allowable under the grant has been charged to the grant or that the grantee has otherwise failed to discharge its obligation to account for grant funds.

(3) The disapproval of a grantee's written request for permission to incur an expenditure during the term of a grant.

(4) A determination that a grant is void because the award was obtained fraudulently, or was otherwise illegal or invalid from inception.

(c) *Notice of adverse determination.* If the Director, or his or her designee, makes an adverse determination with respect to a grant, he or she shall promptly issue a notice of adverse determination to the State which contains the reasons for the determination in sufficient detail to enable the State agency to respond and informing the State agency of the opportunity for review under paragraph (d) of this section.

(d) *Request for review of an adverse determination.* (1) If the State agency wants a review of the determination, it must submit a request for such review to the Director no later than 30 days after the postmark on the notice, unless an extension of time is granted for good cause.

(2) The request for review must contain a full statement of the State's position with respect to the determination being appealed and the pertinent facts and reasons in support of such position. The State agency must attach to the submission a copy of the notice.

(3) The Director may, at his or her discretion, invite the State to discuss pertinent issues and to submit such additional information as he or she deems appropriate.

(4) Based on his or her review, the Director will send a written response to the State. If the response is adverse to the State's position, the correspondence shall state the State's right to appeal to the Departmental Grant Appeals Board, pursuant to Part 16 of this title.

(e) *Request for appeal of an adverse determination.* (1) To appeal an adverse determination, a State agency must file an appeal with the Departmental Grant Appeals Board, in accordance with requirements contained in Part 16 of this title.

(2) The State's application for review must be postmarked no later than 30 days after the postmark on the Director's response to the State's request for review in paragraph (d)(4) of this section.

[51 FR 3914, Jan. 30, 1986]

§ 400.13 Cost allocation.

(a) A State must allocate costs, both direct and indirect, appropriately between the RRP and other programs which it administers.

(b) Within the RRP, a State must allocate costs appropriately among its CMA grant, social services grant, and any other RRP grants which it may receive, as prescribed by the Director.

(c) Certain administrative costs incurred for the overall management of the State's refugee program (e.g., development of the State plan, overall program coordination, and salary and travel costs of the State Refugee Coordinator), as identified by the Director, may be charged to the CMA grant. All other costs must be allocated among the CMA grant, social services grant, and any other RRP grants.

(d) Costs of case management services, as defined in § 400.2, may not be charged to the CMA grant except where all of the following criteria are met:

(1) The case management activities are targeted to time-eligible cash/medical assistance recipients and applicants for the purpose of assisting such recipients and applicants to obtain or retain employment:

(2) Such case management activities are provided under formal and functional linkages with the appropriate local welfare agency and employment service providers; and

(3) Such linkages include required reporting to the welfare agency when a refugee is offered a job, is placed in a job, or fails to participate in the required employability services.

[54 FR 5476, Feb. 3, 1989]

Subpart C—General Administration

Source: 51 FR 3914, Jan. 30, 1986, unless otherwise noted.

§§ 400.20—400.21 [Reserved]

§ 400.22 Responsibility of the State agency.

(a) The State agency may not delegate, to other than its own officials, responsibility for administering or supervising the administration of the plan.

(b) The State agency must have—

(1) Methods for informing staff of State policies, standards, procedures, and instructions; and

(2) Systematic planned examination and evaluation of operations in local offices.

§ 400.23 Hearings.

(a) A State must provide applicants for, and recipients of, assistance and services under the Act with an opportunity for a hearing to contest adverse determinations using hearing procedures set forth in § 205.10(a) of this title for public assistance programs.

(b) If the issue is the date of entry into the United States of an applicant for or recipient of assistance or services, the State must provide for prompt resolution of the issue by inspection of the individual's documentation issued by the Immigration and Naturalization Service (INS) or by information obtained from INS, rather than by hearing.

§ 400.24 [Reserved]

§ 400.25 Residency requirements.

A State may not impose requirements as to duration of residence as a condition of participation in the State's program for the provision of assistance or services.

§ 400.26 [Reserved]

§ 400.27 Safeguarding and sharing of information.

(a) Except for purposes directly connected with, and necessary to, the administration of the program, a State must ensure that no information about, or obtained from, an individual and in possession of any agency providing assistance or services to such individual under the plan, will be disclosed in a form identifiable with the individual without the individual's consent, or if the individual is a minor, the consent of his or her parent or guardian.

(b) The provision by a State to a voluntary resettlement agency, as defined in § 400.2, of information as to whether an individual has applied for or is receiving cash assistance and the individual's address and telephone number is to be considered undertaken for a purpose directly connected with, and necessary to, the administration of the program during the first 36 months after such individual's entry into the United States.

(c) The disclosure of information for any purpose set forth in § 205.50(a) of this title shall be considered undertaken for a purpose directly connected with, and necessary to, the administration of the program.

[51 FR 3914, Jan. 30, 1986, as amended at 54 FR 5476, Feb. 3, 1989]

§ 400.28 Maintenance of records and reports.

(a) A State must provide for the maintenance of such operational records as are necessary for Federal monitoring of the State's refugee resettlement program in accordance with Part 74, Subpart D, of this title. This recordkeeping must include:

(1) Documentation of services and assistance provided, including identification of individuals receiving those services;

(2) Records on the location, progress, and status of unaccompanied minor refugee children, including the last known address of parents; and

(3) Documentation that necessary medical followup services and monitoring have been provided.

(b) A State must submit statistical or programmatic information that the Director determines to be required to fulfill his or her responsibility under the Act on refugees who receive assistance and services which are provided, or the costs of which are reimbursed, under the Act.

(Approved by the Office of Management and Budget under control number 0960-0418)

Subpart D—Immigration Status and Identification of Refugees

SOURCE: 51 FR 3915, Jan. 30, 1986, unless otherwise noted.

§ 400.40 Scope.

This subpart sets forth requirements concerning the immigration status and identification of eligible applicants for assistance under title IV of the Act.

§ 400.41 Definitions

For purposes of this subpart—

"Applicant for asylum" means an individual who has applied for, but has not been granted, asylum under section 208 of the Act.

"Asylee" means an individual who has been granted asylum under section 208 of the Act.

DOCUMENTATION OF REFUGEE STATUS

§ 400.43 Requirements for documentation of refugee status.

(a) An applicant for assistance under title IV of the Act must provide proof, in the form of documentation issued by the Immigration and Naturalization Service (INS), of one of the following statuses under the Act as a condition of eligibility:

(1) Paroled as a refugee or asylee under section 212(d)(5) of the Act;

(2) Admitted as a conditional entrant under section 203(a)(7) of the Act;

(3) Admitted as a refugee under section 207 of the Act;

(4) Granted asylum under section 208 of the Act;

(5) Admitted with an immigration status that entitled the individual to refugee assistance prior to enactment of the Refugee Act of 1980, as specified by the Director; or

(6) Admitted for permanent residence, provided the individual previously held one of the statuses identified above.

(b) The Director will issue instructions specifying the documentation that applicants for assistance must submit.

§ 400.44 Restriction.

An applicant for asylum is not eligible for assistance under title IV of the Act.

Subpart E—Refugee Cash Assistance

SOURCE: 54 FR 5476, Feb. 3, 1989, unless otherwise noted.

§ 400.50 Basis and scope.

This subpart sets forth requirements concerning grants to States under section 412(e) of the Act for refugee cash assistance (RCA).

§ 400.51 Definitions.

For purposes of this subpart—

"Filing unit" means the individual or individuals whose needs are considered in determining eligibility for, and the amount of, an assistance payment for which FF [Federal funding] is claimed under this part.

"Household" means the individual or individuals living in a housing unit.

§ 400.52 Recovery of overpayments and correction of underpayments.

The State agency must comply with regulations at § 233.20(a)(13) of this title governing recovery of overpayments and correction of underpayments in the AFDC program.

APPLICATIONS, DETERMINATIONS OF ELIGIBILITY, AND FURNISHING ASSISTANCE

§ 400.55 Opportunity to apply for cash assistance.

(a) A State must provide any individual wishing to do so, an opportunity to apply for cash assistance and must determine the eligibility of each applicant.

(b) In determining eligibility for cash assistance, the State must—

(1) Comply with regulations at Part 206 of this title governing applications, determinations of eligibility, and furnishing assistance under public assistance programs, as applicable to the AFDC program;

(2) Determine eligibility for other cash assistance programs in accordance with §400.56 of this part;

(3) Verify with the applicant's sponsor or the resettlement agency the amount of financial assistance which the sponsor or resettlement agency is actually providing to the applicant and count any such assistance, provided in cash and, if the State counts inkind assistance in its AFDC program, in kind, in considering income and resources of applicants under §400.61 of this part; and

(4) Contact the applicant's sponsor or the resettlement agency concerning offers of employment and inquire whether the applicant has voluntarily quit employment or has refused to accept an offer of employment within 30 consecutive days immediately prior to the date of application, in accordance with §400.77(a) of this part.

(c) Notwithstanding any other provision of law, the State must notify promptly the agency (or local affiliate) which provided for the initial resettlement of a refugee whenever the refugee applies for cash assistance.

(d) In providing notice to an applicant or recipient to indicate that assistance has been authorized or that it has been denied or terminated, the State must specify the program(s) to which the notice applies, clearly distinguishing between refugee cash assistance and other programs such as AFDC and GA. For example, if a refugee applies for assistance, is determined ineligible for AFDC but eligible for refugee cash assistance, the notice to the applicant must specify clearly the determinations with respect both to AFDC and to refugee cash assistance. Similarly, if a recipient of refugee cash assistance is notified of termination because of reaching the time limit on such assistance, and the State reviews the case file to determine possible eligibility for AFDC or GA, the notice to the recipient must indicate the result of that determination as well as the termination of refugee cash assistance.

§ 400.56 Determination of eligibility under other programs.

(a) *AFDC.* (1) The State must determine eligibility under the AFDC program for refugees who apply for cash assistance.

(2) A State must provide cash assistance under the AFDC program to all refugees who apply for and are eligible under that program.

(3) If the appropriate State agency determines that the refugee applicant is not eligible for cash assistance under the AFDC program, the State must determine eligibility for refugee cash assistance in accordance with §400.60.

(b) *Cash assistance to the aged, blind, and disabled*—(1) *SSI.* (i) The State agency must refer refugees who are 65 years of age or older, or who are blind or disabled, promptly to the Social Security Administration, HHS, to apply for cash assistance under the SSI program.

(ii) If the State agency determines that a refugee who is 65 years of age or older, or blind or disabled, is eligible for refugee cash assistance, it must furnish such assistance until eligibility for cash assistance under the SSI program is determined, provided the conditions of eligibility for refugee cash assistance continue to be met.

(2) *OAA, AB, APTD,or AABD.* In Guam, Puerto Rico, and the Virgin Islands—(i) Eligibility for cash assistance under the OAA, AB, APTD, or AABD program must be determined for refugees who are 65 years or older, or who are blind or disabled; and

(ii) If a refugee who is 65 years of age or older, or blind or disabled, is determined to be eligible for refugee cash assistance, such assistance must be furnished until eligibility for cash assistance under the OAA, AB, APTD, or AABD program is determined, provided the conditions of eligibility for refugee cash assistance continue to be met.

§ 400.57 Emergency cash assistance to refugees.

If the State agency determines that a refugee has an urgent need for cash assistance, it should process the application for cash assistance as quickly as possible and issue the initial payment to the refugee on an emergency basis.

CONDITIONS OF ELIGIBILITY FOR REFUGEE CASH ASSISTANCE

§ 400.60 General eligibility requirements.

(a) Eligibility for refugee cash assistance is limited to those who—

(1) Are ineligible for cash assistance under the AFDC, SSI, OAA, AB, APTD, and AABD programs but meet refugee cash assistance need standards;

(2) Meet immigration status and identification requirements in Subpart D of this part or are the dependent children of, and part of the same filing unit as, individuals who meet the requirements in Subpart D, subject to the limitation in § 400.208 of this part with respect to nonrefugee children;

(3) Meet eligibility requirements and conditions in this subpart;

(4) Meet the requirements contained in Subpart F of this part;

(5) Provide the name of the resettlement agency which resettled them; and

(6) Are not full-time students in institutions of higher education, as defined by the Director, except where such enrollment is approved by the State, or its designee, as part of an individual employability plan for a refugee under § 400.79 of this part.

(b) A refugee may be eligible for refugee cash assistance under this subpart during the 18-month period beginning with the first month the refugee entered the United States.

§ 400.61 Consideration of income and resources.

(a) In considering the income and resources of applicants for and recipients of refugee cash assistance, the State agency must apply the regulations at § 233.20(a)(3) through (11) of this title for considering income and resources of AFDC applicants, except that the State agency may not apply the earned income disregard of $30 plus one-third of the remainder of the earnings or the disregard of $30 set out in § 233.20(a)(11)(ii)(B) of this title.

(b) The State agency may not consider any resources remaining in the applicant's country of origin to be accessible to an applicant for or recipient of refugee cash assistance.

(c) The State agency may not consider a sponsor's income and resources to be accessible to a refugee solely because the person is serving as a sponsor.

§ 400.62 Need standards and payment levels.

(a) In determining need for refugee cash assistance, a State agency must use the State's AFDC need standards established under § 233.20(a)(1) and (2) of this title.

(b) In determining the amount of the refugee cash assistance payment to an eligible refugee who meets the standards in paragraph (a) of this section and applying the consideration of income and resources in § 400.61, a State must pay 100 percent of the payment level which would be appropriate for an eligible filing unit of the same size under the AFDC program.

§ 400.63 Proration of shelter, utilities, and similar needs.

If a State prorates allowances for shelter, utilities, and similar needs in its AFDC program under § 233.20(a)(5) of this title, it must prorate such allowances in the same manner in its refugee cash assistance programs.

§ 400.64 Other AFDC requirements applicable to refugee cash assistance.

In administering the program of refugee cash assistance, the State agency must also apply the following AFDC regulations in this title:

233.31 Budgeting methods for AFDC.
233.32 Payment and budget months (AFDC).
233.33 Determining eligibility prospectively for all payment months (AFDC).
233.34 Computing the assistance payment in the initial one or two months (AFDC).
233.35 Computing the assistance payment under retrospective budgeting after the initial one or two months (AFDC).
233.36 Monthly reporting (AFDC)—which shall apply to recipients of refugee cash assistance who have been in the United States more than 6 months.
233.37 How monthly reports are treated and what notices are required (AFDC).
235.110 Fraud.

Subpart F—Requirements for Employability Services, Job Search, and Employment

SOURCE: 54 FR 5477, Feb. 3, 1989, unless otherwise noted.

§ 400.70 Basis and scope.

This subpart sets forth requirements for applicants for and recipients of refugee cash assistance concerning registration for employment services, participation in social services or targeted assistance, and acceptance of appropriate employment under section 412(e)(2)(A) of the Act. A refugee who is an applicant for or recipient of refugee cash assistance must comply with the requirements in this subpart. (A refugee who is an applicant for or recipient of AFDC must meet the requirements of the AFDC program instead of the requirements in this subpart; a refugee who is an applicant for or recipient of GA must meet the requirements of the GA program instead of the requirements in this subpart.)

§ 400.71 Definitions.

For purposes of this subpart and Subpart I—

"Appropriate agency providing employment services" means an agency providing services specified under § 400.154(a) of this part which are specifically designed to assist refugees in becoming employed, which must include an established program of job referral to, and job placement with, private employers, and which must be determined acceptable by the State.

"Designee," when referring to the State agency's designee, means an agency designated by the State agency for the purpose of carrying out the requirements of § 400.72(a) of this subpart.

"Employability plan" means an individualized written plan for a refugee registered for employment services that sets forth a program of services intended to result in the earliest possible employment of the refugee.

"Employability services" means services, as specified in § 400.154 of this part, designed to enable an individual to obtain employment and to improve the employability or work skills of the individual.

"Employable" means not exempt from registration for employment services under § 400.76 of this part.

"Employment services" means the services specified in § 400.154(a) of this part.

"Registrant" means an individual who has registered for employment services under § 400.75 of this part.

§ 400.72 Arrangements for employability services.

(a) The State agency must make such arrangements as are necessary to enable refugees to meet the requirements of, and receive the employability services specified in, this subpart.

(b) If a State agency makes such arrangements with another agency or agencies, it must retain responsibility for meeting the requirements in this subpart.

(c) In order for an agency to qualify to receive referrals from the State agency of refugees required to register for employability services, such agency must agree to advise the State agency whenever such a refugee fails or refuses to participate in the required services or to accept an offer of employment.

General Requirements

§ 400.75 Registration for employment services, participation in employability service programs and targeted assistance programs, going to job interviews, and acceptance of appropriate offers of employment.

(a) As a condition for receipt of refugee cash assistance, a refugee who is not exempt under § 400.76 of this subpart must, except for good cause shown—

(1) Register with an "appropriate agency providing employment services," as defined in § 400.71, and participate in the employment services provided by such agency, as defined in § 400.154(a) of this part.

(2) Carry out job search, as provided for in § 400.80.

(3) Go to a job interview which is arranged by the State agency or its designee.

(4) Accept at any time, from any source, an offer of employment, as determined to be appropriate by the State agency or its designee.

(5) Participate in any employability service program which provides job or language training in the area in which the refugee resides, which is funded under section 412(c) of the Act, and which is determined to be available and appropriate for that refugee; or if such a program funded under section 412(c) is not available or appropriate in the area in which the refugee resides, any other available and appropriate program in such area.

(6) Participate in any targeted assistance program in the area in which the refugee resides, which is funded under section 412(c) of the Act, and which is determined to be available and appropriate for that refugee.

(7)(i) Accept an offer of employment which is determined to be appropriate by the resettlement agency which was responsible for the initial resettlement of the refugee or by the appropriate State or local employment service;

(ii) Go to a job interview which is arranged through such agency or service; and

(iii) Participate in a social service or targeted assistance program which such agency or service determines to be available or appropriate.

(b) The State agency must permit, but may not require, the voluntary registration for employment services of an applicant or recipient who is exempt under § 400.76 of this part.

§ 400.76 Criteria for exemption from registration for employment services, participation in employability service programs, and acceptance of appropriate offers of employment.

(a) The State agency must consider an applicant for or recipient of refugee cash assistance to be employable and require him or her to meet the requirements of § 400.75(a) unless the applicant or recipient is—

(1) Under age 16.

(2) Under age 18 and a full-time student (as defined by the State for its AFDC program); or (if the State's AFDC program extends coverage to this group) age 18 and a full-time student in secondary school or in the equivalent level of vocational or technical training (as defined by the State for its AFDC program) and reasonably expected to complete the program before reaching age 19.

(3) Ill, when determined by the State agency on the basis of medical evidence or on another sound basis that the illness or injury is serious enough to temporarily prevent entry into employment or training.

(4) Incapacitated, when determined by a physician or licensed or certified psychologist and verified by the State agency, that a physical or mental impairment, by itself or in conjunction with age, prevents the individual from engaging in employment or training.

(5) 65 years of age or older.

(6) Caring for another member of the household who has a physical or mental impairment which requires, as determined by a physician or licensed or certified psychologist and verified by the State agency, care in the home on a substantially continuous basis, and no other appropriate member of the household is available.

(7) A parent or other caretaker relative of a child under age 6 who person-

ally provides full-time care of the child with only very brief and infrequent absences from the child.

(8) Working at least 30 hours a week in unsubsidized employment expected to last a minimum of 30 days. This exemption continues to apply if there is a temporary break in full-time employment expected to last no longer than 10 workdays. Or

(9) Pregnant if it has been medically verified that the child is expected to be born in the month in which such registration would otherwise be required or within the next 3 months.

(b) Inability to communicate in English does not exempt a refugee from registration for employment services, participation in employability service programs, carrying out job search, and acceptance of appropriate offers of employment.

§ 400.77 Effect of quitting employment or failing or refusing to participate in required services.

(a) As a condition of eligibility for refugee cash assistance, an employable applicant may not, without good cause, within 30 consecutive calendar days immediately prior to the application for assistance (or such longer period required by § 400.82(b)(3)(ii), if applicable), have voluntarily quit employment or have refused to accept an offer of employment determined to be appropriate by the State agency or its designee, using criteria set forth in § 400.81.

(b) As a condition of continued receipt of refugee cash assistance, an employable recipient may not, without good cause, voluntarily quit employment or fail or refuse to meet the requirements of § 400.75(a).

§ 400.78 Service requirements for employed recipients of refugee cash assistance.

(a) As a condition of continued receipt of refugee cash assistance, a recipient who is not exempt under § 400.76 of this part and who is employed less than 30 hours a week must accept part-time employability services, as available and as determined to be appropriate, using criteria set forth in § 400.81 of this part, provided that such services must not interfere with the recipient's job.

(b) A State agency may, but is not required to, require part-time employability services if a recipient of refugee cash assistance is employed at least 30 hours a week, provided that such services must not interfere with the recipient's job.

§ 400.79 Development of an employability plan.

(a) An individual employability plan must be developed for each recipient of refugee cash assistance who is not exempt under § 400.76 of this part.

(b) If such a plan has been developed by the resettlement agency which sponsored the refugee, or its designee, the State agency, or its designee, may accept this plan if it determines that the plan is appropriate for the refugee and meets the requirements of this subpart.

(c) The employability plan must—

(1) Be designed to lead to the earliest possible employment and not be structured in such a way as to discourage or delay employment or job-seeking;

(2) Contain a definite employment goal, attainable in the shortest time period consistent with the employability of the refugee in relation to job openings in the area; and

(3) Enable the individual to meet the job search requirements of § 400.80 of this part.

JOB SEARCH REQUIREMENTS

§ 400.80 Job search requirements.

(a) An employable recipient of refugee cash assistance must carry out a job search program beginning at any time required by the State. The State agency shall require such job search program to begin:

(1) No later than 6 months after the refugee entered the United States or

(2) At the time the refugee is determined eligible for refugee cash assistance if the refugee has completed at least 6 months in the United States at the time of such determination.

(b) Such job search program shall continue for at least 8 consecutive weeks and shall meet such requirements as the State agency determines appropriate, including the amount of time to be devoted to employer contacts per week or the number of employer contacts required per week.

(c) The State agency must determine and carry out the procedures it considers necessary to ensure that requirements for participation in job search are met.

CRITERIA FOR APPROPRIATE EMPLOYABILITY SERVICES AND EMPLOYMENT

§ 400.81 Criteria for appropriate employability services and employment.

The State agency or its designee must determine if employability services and employment are appropriate in accordance with the following criteria:

(a) The services or employment must meet the following criteria, or, if approved by the Director, the comparable criteria applied by the State in an alternative program for AFDC recipients:

(1) All assignments must be within the scope of the individual's employability plan. The plan may be modified to reflect changed services or employment conditions.

(2) The services or employment must be related to the capability of the individual to perform the task on a regular basis. Any claim of adverse effect on physical or mental health must be based on adequate medical testimony from a physician or licensed or certified psychologist indicating that participation would impair the individual's physical or mental health.

(3) The total daily commuting time to and from home to the service or employment site must not normally exceed 2 hours, not including the transporting of a child to and from a child care facility, unless a longer commuting distance or time is generally accepted in the community, in which case the round trip commuting time must not exceed the generally accepted community standards.

(4) When child care is required, the care must meet the standards normally required by the State in its work and training programs for AFDC recipients.

(5) The service or work site to which the individual is assigned must not be in violation of applicable Federal, State, or local health and safety standards.

(6) Assignments must not be made which are discriminatory in terms of age, sex, race, creed, color, or national origin.

(7) Appropriate work may be temporary, permanent, full-time, part-time, or seasonal work if such work meets the other standards of this section.

(8) The wage shall meet or exceed the Federal or State minimum wage law, whichever is applicable, or if such laws are not applicable, the wage shall not be substantially less favorable than the wage normally paid for similar work in that labor market.

(9) The daily hours of work and the weekly hours of work shall not exceed those customary to the occupation. And

(10) No individual may be required to accept employment if:

(i) The position offered is vacant due to a strike, lockout, or other bona fide labor dispute; or

(ii) The individual would be required to work for an employer contrary to the conditions of his existing membership in the union governing that occupation. However, employment not governed by the rules of a union in which he or she has membership may be deemed appropriate.

(11) In addition to meeting the other criteria of this paragraph, the quality of training must meet local employers' requirements so that the individual will be in a competitive position within the local labor market. The training must also be likely to lead to employment which will meet the appropriate work criteria.

(b) If an individual is a professional in need of professional refresher training and other recertification services in order to qualify to practice his or her profession in the United States, the training may consist of full-time attendance in a college or professional training program, provided that such training: Is approved as part of the individual's employability plan by the State agency, or its designee; does not exceed one year's duration (including any time enrolled in such program in the United States prior to the refugee's application for assistance); is specifically intended to assist the professional in becoming relicensed in his or her profession; and, if completed, can realistically be expected to result in such relicensing.

(c) A job offered, if determined appropriate under the requirements of this subpart, is required to be accepted by the refugee without regard to whether such job would interrupt a program of services planned or in progress unless:

(1) The refugee is currently participating in a program *in progress* of on-the-job training (as described in § 400.154(c)) or vocational training (as described in § 400.154(e)) which meets the requirements of this part and which is being carried out as part of an approved employability plan; or

(2) The refugee is enrolled full-time in a professional recertification program which meets the requirements of paragraph (b) of this section.

FAILURE OR REFUSAL TO CARRY OUT JOB SEARCH OR TO ACCEPT EMPLOYABILITY SERVICES OR EMPLOYMENT

§ 400.82 Failure or refusal to carry out job search or to accept employability services or employment.

(a) *Voluntary registrant.* When a voluntary registrant—i.e., a recipient of refugee cash assistance who is exempt from registration under § 400.76 of this part—has failed or refused to participate in appropriate employability services, to carry out job search, or to accept an appropriate offer of employment, the State agency, or its designee, may deregister the individual for up to 90 days from the date of determination that such failure or refusal has occurred, but the individual's cash assistance may not be affected.

(b) *Mandatory registrant*—(1) *Termination of assistance.* When, without good cause, a mandatory registrant—i.e., an employable recipient of refugee cash assistance who is not exempt from registration under § 400.76 of this part—has failed or refused to meet the requirements of § 400.75(a) or has voluntarily quit a job, the State must terminate assistance, in accordance with paragraphs (b)(2) and (3) of this section.

(2) *Notice of intended termination.* (i) In cases of proposed action to terminate, discontinue, suspend, or reduce assistance, the State agency must give timely and adequate notice, following the same procedures as those used in its AFDC program under § 206.10(a)(7) of this title.

(ii) The written notice must include—

(A) An explanation of the reason for the action and the consequences of such failure or refusal; and

(B) Notice of the registrant's right to a hearing under § 400.83 of this part.

(3) *Sanctions.* (i) If the sanctioned individual is the only member of the filing unit, the assitance shall be terminated. If the filing unit includes other members, the State shall not take into account the sanctioned individual's needs in determining the filing unit's need for assistance.

(ii) The sanction applied in paragraph (b)(3)(i) of this section shall remain in effect for 3 payment months for the first such failure and 6 payment months for any subsequent such failure.

(iii) A conciliation period prior to the imposition of sanctions must be provided for in accordance with the following time-limitations: The conciliation effort shall begin as soon as possible, but no later than 10 days following the date of failure or refusal to participate, and may continue for a period not to exceed 30 days. Either the State or the recipient may terminate this period sooner when either believes that the dispute cannot be resolved by conciliation.

§ 400.83 Hearings.

The State must provide an applicant for or recipient of refugee cash assistance an opportunity for a hearing, using the same procedures and standards set forth in § 205.10(a) of this title, to contest a determination concerning employability, or failure or refusal to carry out job search or to accept an appropriate offer of employability services or employment, resulting in denial or termination of assistance.

Subpart G—Refugee Medical Assistance

SOURCE: 54 FR 5480, Feb. 3, 1989, unless otherwise noted.

§ 400.90 Basis and scope.

This subpart sets forth requirements concerning grants to States under section 412(e) of the Act for refugee medical assistance (RMA), as defined at § 400.2 of this part.

§ 400.91 Definitions.

For purposes of this subpart—

"Medically needy" means individuals who are eligible for medical assistance under a State's approved Medicaid State plan in accordance with section 1902(a)(10)(C) of the Social Security Act.

"Spend down" means to deduct from countable income incurred medical expenses, thereby lowering the amount of countable income to a level that meets financial eligibility requirements in accordance with 42 CFR 435.831 (or, as applicable to Guam, the Virgin Islands, and Puerto Rico, 42 CFR 436.831).

APPLICATIONS, DETERMINATIONS OF ELIGIBILITY, AND FURNISHING ASSISTANCE

§ 400.93 Opportunity to apply for medical assistance.

(a) A State must provide any individual wishing to do so an opportunity to apply for medical assistance and must determine the eligibility of each applicant.

(b) In determining eligibility for medical assistance, the State agency must comply with regulations governing applications, determinations of eligibility, and furnishing Medicaid (including the opportunity for fair hearings) in the States and the District of Columbia under 42 CFR Part 435, Subpart J, and in Guam, Puerto Rico, and the Virgin Islands under 42 CFR Part 436, Subpart J, and 42 CFR Part 431, Subpart E.

(c) Notwithstanding any other provision of law, the State must notify promptly the agency (or local affiliate) which provided for the initial resettlement of a refugee whenever the refugee applies for medical assistance.

(d) In providing notice to an applicant or recipient to indicate that assistance has been authorized or that it has been denied or terminated, the State must specify the program(s) to which the notice applies, clearly distinguishing between refugee medical assistance and Medicaid. For example, if a refugee applies for assistance, is determined ineligible for Medicaid but eligible for refugee medical assistance, the notice must specify clearly the determinations with respect both to Medicaid and to refugee medical assistance.

§ 400.94 Determination of eligibility for Medicaid.

(a) The State must determine Medicaid eligibility under its Medicaid State plan for refugees who apply for medical assistance.

(b) A State that provides Medicaid to medically needy individuals in the State under its State plan must determine a refugee applicant's eligibility for Medicaid as medically needy.

(c) A State must provide medical assistance under the Medicaid program to all refugees eligible under its State plan.

(d) If the appropriate State agency determines that the refugee applicant is not eligible for Medicaid under its State plan, the State must determine the applicant's eligibility for refugee medical assistance.

CONDITIONS OF ELIGIBILITY FOR REFUGEE MEDICAL ASSISTANCE

§ 400.100 General eligibility requirements.

(a) Eligibility for refugee medical assistance is limited to those refugees who—

(1) Are ineligible for Medicaid but meet the financial eligibility standards under § 400.101;

(2) Meet immigration status and identification requirements in Subpart D of this part or are the dependent children of, and part of the same filing unit as, individuals who meet the requirements in Subpart D, subject to the limitation in § 400.208 of this part with respect to nonrefugee children;

(3) Meet eligibility requirements and conditions in this subpart;

(4) Have not been denied, or terminated from, refugee cash assistance under § 400.82 of this part;

(5) Provide the name of the resettlement agency which resettled them; and

(6) Are not full-time students in institutions of higher education, as defined by the Director, except where such enrollment is approved by the State, or its designee, as part of an individual employability plan for a refugee under § 400.79 of this part or a plan for an unaccompanied minor in accordance with § 400.112.

(b) A refugee may be eligible for refugee medical assistance under this subpart during the 18-month period beginning with the first month the refugee entered the United States.

(c) The State agency may not require that a refugee actually receive or apply for refugee cash assistance as a condition of eligibility for refugee medical assistance.

(d) All recipients of refugee cash assistance are eligible for refugee medical assistance.

§ 400.101 Financial eligibility standards.

In determining eligibility for refugee medical assistance, the State agency must use—

(a) In States with medically needy programs under 42 CFR Part 435, Subpart D, the State's medically needy financial eligibility standards established under 42 CFR Part 435, Subpart I, and as reflected in the State's approved title XIX State Medicaid plan; and

(b) In States without a medically needy program, the State's AFDC need standards established under § 233.20(a)(2) of this title.

§ 400.102 Consideration of income and resources.

(a) Except as specified in paragraph (b) of this section, in considering financial eligibility of applicants for refugee medical assistance, the State agency must use—

(1) In States with medically needy programs, the standards governing determination of income eligibility in 42 CFR 435.831, and as reflected in the State's approved title XIX State Medicaid plan; and

(2) In States without medically needy programs, the standards governing consideration of income and resources of AFDC applicants in § 233.20(a) (3) through (11) of this title, except as specified in § 400.61(a) of this part.

(b) The State may not consider inkind services and shelter provided to an applicant by a sponsor or resettlement agency in determining eligibility for and receipt of refugee medical assistance.

§ 400.103 Coverage of refugees who spend down to AFDC need standard.

In States without a medically needy program, if an applicant for refugee medical assistance does not meet the appropriate AFDC need standard, the State agency must allow that individual to spend down to the AFDC need standard using the methods for deducting incurred medical expenses set forth in 42 CFR 435.831(c).

§ 400.104 Transitional coverage of recipients who receive increased earnings from employment.

If a refugee who is receiving refugee medical assistance becomes ineligible solely by reason of increased earnings from employment, the refugee's medical assistance eligibility shall be extended by a period of four months or until the refugee reaches the end of his or her time-eligibility period for refugee medical assistance, in accordance with § 400.100(b), whichever comes first.

SCOPE OF MEDICAL SERVICES

§ 400.105 Mandatory services.

In providing refugee medical assistance to refugees, a State must provide at least the same services in the same manner and to the same extent as under the State's Medicaid program, as delineated in 42 CFR Part 440.

§ 400.106 Additional services.

If a State or local jurisdiction provides additional medical services beyond the scope of the State's Medicaid program to destitute residents of the State or locality through public facilities, such as county hospitals, the State may provide to refugees who are determined eligible under §§ 400.94 or 400.100 of this part the same services through public facilities.

§ 400.107 Health assessments.

(a) As part of its refugee medical assistance program, a State may provide a health assessment to a refugee provided—

(1) The assessment is in accordance with requirements prescribed by the Director, or his or her designee; and

(2) Written approval for the assessment program or project has been provided to the State by the Director, or designee.

(b) If such assessment is done during the first 90 days after a refugee's initial date of entry into the United States, it may be provided without prior determination of the refugee's eligibility under §§ 400.94 or 400.100 of this part.

Subpart H—Child Welfare Services

SOURCE: 51 FR 3915, Jan. 30, 1986, unless otherwise noted.

§ 400.110 Basis and scope.

This subpart prescribes requirements concerning grants to States under section 412(d)(2)(B) of the Act for child welfare services to refugee unaccompanied minors.

§ 400.111 Definitions.

For purposes of this subpart—

"Child welfare agency" means a agency licensed or approved under State law to provide child welfare services to children in the State.

"Unaccompanied minor" means a person who has not yet attained 18 years of age (or a higher age established by the State of resettlement in its child welfare plan under title IV-B of the Social Security Act for the availability of child welfare services to any other child in the State); who entered the United States unaccompanied by and not destined to (a) a parent or (b) a close nonparental adult relative who is willing and able to care for the child or (c) an adult with a clear and court-verifiable claim to custody of the minor; and who has no parent(s) in the United States. *Limitation:* No child may be considered by a State to be "unaccompanied" for the purpose of this part unless such child was identified by INS at the time of entry as "unaccompanied," except that a child who was correctly classified as "unaccompanied" by a State in accordance with Action Transmittal SSA-AT-79-04 (and official interpretations thereof by the Director) prior to the effective date of this definition may continue to be so classified until such status is terminated in accordance with § 400.113(b) of this subpart; and the Director may approve the classification of a child as "unaccompanied" on the basis of information provided by a State showing that such child should have been classified as "unaccompanied" at the time of entry.

"Title IV-B plan" means a State's plan for providing child welfare services to children in the State under part B of title IV of the Social Security Act.

§ 400.112 Child welfare services for refugee children.

(a) In providing child welfare services to refugee children in the State, a State must provide the same child welfare services and benefits to the same extent as are provided to other children of the same age in the State under a State's title IV-B plan.

(b) A State must provide child welfare services to refugee children according to the State's child welfare standards, practices, and procedures.

(c) Foster care maintenance payments must be provided under a State's program under title IV-E of the Social Security Act if a child is eligible under that program.

§ 400.113 Duration of eligibility.

(a) Except as specified in paragraph (b), a refugee child may be eligible for services under § 400.112 of this part during the 36-month period beginning with the first month the child entered the United States.

(b) An unaccompanied minor continues to meet the definition of "unaccompanied minor" and is eligible for benefits and services under §§ 400.115

through 400.120 of this part until the minor—

(1) Is reunited with a parent; or

(2) Is united with a nonparental adult (relative or nonrelative) willing and able to care for the child to whom legal custody and/or guardianship is granted under State law; or

(3) Attains 18 years of age or such higher age as the State's title IV-B plan prescribes for the availability of child welfare services to any other child in the State.

§ 400.114 [Reserved]

§ 400.115 Establishing legal responsibility.

(a) A State must ensure that legal responsibility is established, including legal custody and/or guardianship, as appropriate, in accordance with applicable State law, for each unaccompanied minor who resettles in the State. The State must initiate procedures for establishing legal responsibility for the minor, with an appropriate court (if action by a court is required by State law), within 30 days after the minor arrives at the location of resettlement.

(b) In establishing legal responsibility, including legal custody and/or guardianship under State law, as appropriate, the minor's natural parents should not be contacted in their native country since contact could be dangerous to the parents.

(c) Unaccompanied minors are not generally eligible for adoption since family reunification is the objective of the program. In certain rare cases, adoption may be permitted pursuant to adoption laws in the State of resettlement, provided a court finds that: (1) Adoption would be in the best interest of the child; and (2) there is termination of parental rights (for example, in situations where the parents are dead or are missing and presumed dead) as determined by the appropriate State court. When adoption occurs, the child's status as an unaccompanied minor terminates.

§ 400.116 Service for unaccompanied minors.

(a) A State must provide unaccompanied minors with the same range of child welfare benefits and services available in foster care cases to other children in the State. Allowable benefits and services may include foster care maintenance (room, board, and clothing) payments; medical assistance; support services; services identified in the State's plans under titles IV-B and IV-E of the Social Security Act; services permissible under title XX of the Social Security Act; and expenditures incurred in establishing legal responsibility.

(b) A State may provide additional services if the Director, or his or her designee, determines such services to be reasonable and necessary for a particular child or children and provides written notification of such determination to the State.

§ 400.117 Provision of care and services.

(a) A State may provide care and services to an unaccompanied minor directly or through arrangements with a public or private child welfare agency approved or licensed under State law.

(b) If a State arranges for the care and services through a public or private nonprofit child welfare agency, it must retain oversight responsibility for the appropriateness of the unaccompained minor's care.

§ 400.118 Case planning.

(a) A State, or its designee under § 400.117, must develop and implement an appropriate plan for the care and supervision of, and services provided to, each unaccompanied minor, to ensure that the child is placed in a foster home or other setting approved by the legally responsible agency and in accordance with the child's need for care and for social, health, and educational services.

(b) Case planning for unaccompanied minors must, at a minimum, address the following elements:

(1) Family reunification;

(2) Appropriate placement of the unaccompanied child in a foster home, group foster care, residential facility, supervised independent living, or other setting, as deemed appropriate in meeting the best interest and special needs of the child.

(3) Health screening and treatment, including provision for medical and dental examinations and for all necessary medical and dental treatment.

(4) Orientation, testing, and counseling to facilitate the adjustment of the child to American culture.

(5) Preparation for participation in American society with special emphasis upon English language instruction and occupational as well as cultural training as necessary to facilitate the child's social integration and to prepare the child for independent living and economic self-sufficiency.

(6) Preservation of the child's ethnic and religious heritage.

(c) A State, or its designee under section 400.117 of this part, must review the continuing appropriatness of each unaccompanied minor's living arrangement and services no less frequently than every 6 months.

(Approved by the Office of Management and Budget under control number 0960-0418)

§ 400.119 Interstate movement.

After the initial placement of an unaccompanied minor, the same procedures that govern the movement of nonrefugee foster cases to other States apply to the movement of unaccompanied minors to other States.

§ 400.120 Reporting requirements.

A State must submit to ORR, on forms prescribed by the Director, the following reports on each unaccompanied minor:

(a) An initial report within 30 days of the date of the minor's placement in the State;

(b) A progress report every 12 months beginning with 12 months from the date of the initial report in paragraph (a);

(c) A change of status report within 60 days of the date that—

(1) The minor's placement is changed;

(2) Legal responsibility of any kind for the minor is established or transferred; or

(d) A final report within 60 days of the date of that the minor—

(1) Is reunited with a parent; or

(2) Is united with an adult, other than a parent, in accordance with § 400.113(b) or § 400.115(c) of this part.

(3) Is emancipated.

(Approved by the Office of Management and Budget under control number 0960-0418)

Subpart I—Refugee Social Services

SOURCE: 54 FR 5481, Feb. 3, 1989, unless otherwise noted.

§ 400.140 Basis and scope.

This subpart sets forth requirements concerning grants to States under section 412(c) of the Act for refugee social services.

§ 400.141 Definitions.

For purposes of this subpart—

"Refugee social services" means any title XX social service as defined below or any service set forth in §§ 400.154 or 400.155 of this subpart.

"Title XX social services" means any service which is permissible in the State under the State's annual pre-expenditure report under title XX of the Social Security Act.

APPLICATIONS, DETERMINATIONS OF ELIGIBILITY, AND PROVISION OF SERVICES

§ 400.145 Opportunity to apply for services.

(a) A State must provide any individual wishing to do so an opportunity to apply for services and determine the eligibility of each applicant.

(b) Except as otherwise specified in this subpart, a State must determine eligibility for and provide refugee social services specified in §§ 400.154 and 400.155 in accordance with the same procedures which it follows in its social service program under title XX of the Social Security Act with respect to determining eligibility, acting on applications and requests for services, and providing notification of right to a hearing.

FUNDING AND SERVICE PRIORITIES

§ 400.146 Use of funds.

(a) If a State's dependency rate, as defined in paragraph (b) of this section, is 55 percent or more, as determined by the Director, the State must use at least 85 percent of its social service grants to provide employability services as set forth in § 400.154 of this subpart. This limitation shall not apply if the annual social services plan which the Director receives from the State, in accordance with § 400.11(b)(2) of this part, was established by or in consultation with local governments, and the Director determines that the plan provides for the maximum appropriate provision of employability services for, and the maximum placement of, employable refugees consistent with performance standards established under section 106 of the Job Training Partnership Act.

(b) "Dependency rate" means the result of the following calculation:

(1) The number of refugees receiving cash assistance funded in whole or in part under this part,

(2) Divided by the Director's estimate of the State's population of refugees who have been in the United States less than the number of months for which funding for cash assistance is provided under this part, and

(3) Multiplied by 100.

§ 400.147 Priority in provision of services.

(a) A State must plan its social service program and allocate its social service funds in such a manner that an appropriate portion of funds, based on population and service needs, as determined by the State, is used to provide services to newly arriving refugees and to other refugees who have been in the United States less than one year. The portion proposed for such use must be specified and justified as part of the State's plan under § 400.11(b)(2) of Subpart B.

(b) In providing employability services, a State must give priority to a refugee who is receiving cash assistance which is funded, in whole or in part, under this part.

(c) If a State intends to provide services to refugees who have been in the United States for more than 36 months, the State must specify and justify, as part of its plan under § 400.11(b)(2) of Subpart B, the portion of service funds which it proposes to use to provide services to those refugees.

PURCHASE OF SERVICES

§ 400.148 Purchase of services.

A state may provide services directly or it may purchase services from public or private service providers.

CONDITIONS OF ELIGIBILITY FOR REFUGEE SOCIAL SERVICES

§ 400.150 General eligibility requirements.

Eligibility for refugee social services is limited to those refugees who—

(a) Meet immigration status and identification requirements in Subpart D of this part;

(b) Meet the other eligibility requirements and conditions in this subpart.

§ 400.152 Limitations on eligibility for specific services.

(a) A State may provide the social services defined in § 400.154 to refugees who are 16 years of age or older and who are not full-time students in elementary or secondary school, except that such a student may be provided services under § 400.154 (a) and (b) in order to obtain part-time or temporary (e.g., summer) employment while a student or full-time permanent employment upon completion of schooling.

(b) A State may provide the social services defined in § 400.155 to refugees without eligibility limitations, except for such limitations as may apply to title XX services provided under § 400.155(h).

SCOPE OF REFUGEE SOCIAL SERVICES

§ 400.153 Title XX social services.

A State may provide the same services in the same manner and to the same extent as are permissible under the State's title XX social service program to refugees who meet the eligibility requirements applicable to services under that program.

§ 400.154 Employability services.

A State may provide the following employability services—

(a) *Employment services,* including development of an individual employability plan, world-of-work and job orientation, job clubs, job workshops, job development, referral to job opportunities, job search, and job placement and followup.

(b) *Employability assessment services,* including aptitude and skills testing.

(c) *On-the job training,* when such training is provided at the employment site and is expected to result in full-time, permanent, unsubsidized employment with the employer who is providing the training.

(d) *English language instruction,* with an emphasis on English as it relates to obtaining and retaining a job.

(e) *Vocational training,* including driver education and training when provided as part of an individual employability plan.

(f) *Skills recertification,* when such training meets the criteria for appropriate training in § 400.81(b) of this part.

(g) *Day care,* when necessary for participation in an employability service or for the acceptance or retention of employment.

(h) *Transportation,* when necessary for participation in an employability service.

(i) *Translation and interpreter services,* when necessary in connection with employment or participation in an employability service.

(j) *Case management services,* as defined in § 400.2 of this part, for refugees who are considered employable under § 400.76 and for recipients of AFDC and GA who are considered employable, provided that such services are directed toward a refugee's attainment of employment as soon as possible after arrival in the United States.

NOTE: Under circumstances specified in § 400.13(d), a State may, but is not required to, charge certain case management services to its CMA grant rather than its social services grants.

§ 400.155 Other services.

A State may provide the following other services—

(a) *Information and referral services.*

(b) *Outreach services,* including activities designed to familiarize refugees with available services.

(c) *Social adjustment services,* including:

(1) *Emergency services,* as follows: Assessment and short-term counseling to persons in a perceived crisis; referral to appropriate resources; and the making of arrangements for necessary services.

(2) *Health-related services,* as follows: Information; referral to appropriate resources; assistance in scheduling appointments and obtaining services; and counseling to individuals or families to help them understand and identify their physical and mental health needs and maintain or improve their physical and mental health.

(3) *Home management services,* as follows: Formal or informal instruction to individuals or families in management of household budgets, home maintenance, nutrition, housing standards, tenants' rights, and other consumer education services.

(d) *Day care,* when necessary for participation in a service other than an employability service.

(e) *Transportation,* when necessary for participation in a service other than an employability service.

(f) *Translation and interpreter services,* when necessary for a purpose other than in connection with employment or participation in an employability service.

(g) *Case management services,* when necessary for a purpose other than in connection with employment or participation in employability services.

(h) *Title XX social services,* which may be provided in the same manner and to the same extent as are permissible under the State's title XX social service program to refugees who meet the eligibility requirements applicable to services under that program.

§ 400.156 Limitations and restrictions.

(a) In order to avoid interference with refugee job search and employment, English language instruction and vocational training funded under this part must be provided to the fullest extent feasible outside normal working hours.

(b) In planning and providing services under §§ 400.154 and 400.155, a State must take into account those services which a resettlement agency is required to provide for a refugee whom it sponsors and not duplicate the provision of such services to such refugee.

Subpart J—Federal Funding

SOURCE: 51 FR 3916, Jan. 30, 1986, unless otherwise noted.

§ 400.200 Scope.

This subpart specifies when, and the extent to which, Federal funding (FF) is available under this regulation in expenditures for determining eligibility and for providing assistance and services to refugees determined eligible under this part, and prescribes limitations and conditions on FF for those expenditures.

FEDERAL FUNDING FOR EXPENDITURES FOR DETERMINING ELIGIBILITY AND PROVIDING ASSISTANCE AND SERVICES

§ 400.202 Extent of Federal funding.

Subject to the availability of funds and under the terms and conditions approved by the Director, FF will be provided for 100 percent of authorized allowable costs of determining eligibility and providing assistance and services in accordance with this part.

§ 400.203 Federal funding for cash assistance.

(a) Federal funding is available for cash assistance provided to eligible refugees during the 36-month period beginning with the first month the refugee entered the United States, as follows—

(1) If a refugee is eligible for AFDC, adult assistance programs, or foster care maintenance payments under title IV-E of the Social Security Act, FF is available only for the non-Federal share of such assistance.

(2) If a refugee is eligible for SSI, FF is available for any supplementary payment a State may provide under that program.

(b) Federal funding is available for refugees cash assistance (RCA) provided to eligible refugees during the 12-month period beginning with the first month the refugee entered the United States.

(c) Federal funding is available for general assistance (GA) provided to eligible refugees during the 24-month period beginning with the 13th month after the refugee entered the United States.

[51 FR 3916, Jan. 30, 1986 as amended at 53 FR 32224, Aug. 24, 1988]

§ 400.204 Federal funding for medical assistance.

(a) Federal funding is available for the non-Federal share of medical assistance provided to refugees who are eligible for Medicaid or adult assistance programs during the 36-month period beginning with the first month the refugee entered the United States.

(b) Federal funding is available for refugee medical assistance (RMA) provided to eligible refugees during the 12-month period beginning with the first month the refugee entered the United States.

(c) Federal funding is available for a State's expenditures for medical assistance under a general assistance (GA) program during the 24-month period beginning with the 13th month after the refugee entered the United States.

[51 FR 3916, Jan. 30, 1986, as amended at 53 FR 32225, Aug. 24, 1988]

§ 400.205 Federal funding for assistance and services for unaccompanied minors.

Federal funding is available for a State's expenditures for service to unaccompanied minors under §§ 400.115 through 400.120 of this part until the minor's status as an unaccompanied minor is terminated as specified by § 400.113.

§ 400.206 Federal funding for social services.

Federal funding is available for refugee social services as set forth in Subpart I of this part, including the reasonable and necessary identifiable administrative costs of providing such services, in accordance with allocations by the Director.

[54 FR 5483, Feb. 3, 1989]

§ 400.207 Federal funding for administrative costs.

Federal funding is available for reasonable and necessary indentifiable administrative costs of providing assistance and services under this part, and such costs may be included in a State's claims against its quarterly grants for the purposes set forth in §§ 400.203 through 400.205 of this part.

§ 400.208 Claims involving filing units which include both refugees and nonrefugees.

(a) Federal funding is available for a State's expenditures for assistance and services to a filing unit which includes a refugee parent or two refugee parents and one or more of their children who are nonrefugees, including children who are United States citizens.

(b) Federal funding is not available for a State's expenditures for assistance and services provided to a nonrefugee adult member of a filing unit or to a nonrefugee child or children in a filing unit if one parent in the filing unit is a nonrefugee.

§ 400.209 Claims involving filing units which include refugees who have been in the United States more than 36 months.

Federal funding is not available for State expenditures for cash and medical assistance and child welfare services (except services for unaccompanied minors) provided to any refugee within a filing unit who has been in the United States

(a) more than 36 months if the filing unit is eligible for AFDC, SSI, Medicaid, GA, or child welfare services (except services for unaccompanied minors), or

(b) more than 12 months if the filing unit is eligible for RCA or RMA. A State agency must exclude expenditures made on behalf of such refugees from its claim.

[51 FR 3916, Jan. 30, 1986 as amended at 53 FR 32225, Aug. 24, 1988]

§ 400.210 Time limit for filing of State claims.

Federal funding is available for a State's expenditures for assistance and services to eligible refugees for which a claim is filed no later than

(a) one year after the end of the Federal fiscal year in which the grant was awarded in the case of a grant for cash assistance, medical assistance, and related administrative costs, and

(b) two years in the case of a grant for social (support) services.

§ 400.220 Counting time-eligibility of refugees.

A State may calculate the time-eligibility of a refugee under this part in either of the following ways:

(a) On the basis of calendar months, in which case the month of arrival in the United States must count as the first month; or

(b) On the basis of the actual date of arrival, in which case each month will be counted from that specific date.

[54 FR 5483, Feb. 3, 1989]

Subpart K—Waivers

§ 400.300 Waivers.

If a State agency administering a plan approved under this part demonstrates, to the satisfaction of the Director, that it cannot reasonably comply with a requirement of this part, the Director may waive such requirement with respect to such State, unless required by statute, if the Director determines that such waiver will advance the purposes of this part.

[51 FR 3917, Jan. 30, 1986]

PART 401—CUBAN/HAITIAN ENTRANT PROGRAM

Sec.
401.1 [Reserved]
401.2 Definitions.
401.3—401.11 [Reserved]
401.12 Cuban and Haitian entrant cash and medical assistance.

Authority: Sec. 501(a), Pub. L. 96-422, 94 Stat. 1810 (8 U.S.C. 1522 note); Executive Order 12341 (January 21, 1982).

Source: 47 FR 10850, Mar. 12, 1982, unless otherwise noted.

§ 401.1 [Reserved]

§ 401.2 Definitions.

For purposes of this part a "Cuban and Haitian entrant" or "entrant" is defined as:

(a) Any individual granted parole status as a Cuban/Haitian Entrant (Status Pending) or granted any other special status subsequently established under the immigration laws for nationals of Cuba or Haiti, regardless of the status of the individual at the time assistance or services are provided; and

(b) Any other national of Cuba or Haiti

(1) Who:

(i) Was paroled into the United States and has not acquired any other status under the Immigration and Nationality Act;

(ii) Is the subject of exclusion or deportation proceedings under the Immigration and Nationality Act; or

(iii) Has an application for asylum pending with the Immigration and Naturalization Service; and

(2) With respect to whom a final, nonappealable, and legally enforceable order of deportation or exclusion has not been entered.

§§ 401.3—401.11 [Reserved]

§ 401.12 Cuban and Haitian entrant cash and medical assistance.

Except as may be otherwise provided in this section, cash and medical assistance shall be provided to Cuban and Haitian entrants by the same agencies, under the same conditions, and to the same extent as such assistance is provided to refugees under Part 400 of this title.

(a) For purposes of determining the eligibility of Cuban and Haitian entrants for cash and medical assistance under this section and the amount of assistance for which they are eligible under this section, the same standards and critieria shall be applied as are applied in the determination of eligibility for an amount of cash and medical assistance for refugees under § 400.62 of this title.

(b) Federal reimbursement will be provided to States for the costs of providing cash and medical assistance (and related administrative costs) to Cuban and Haitian entrants according to procedures and requirements, including procedures and requirements relating to the submission and approval of a State plan, identical to those applicable to the Refugee Program and set forth in Part 400 of this title.

(c) The number of months during which an entrant may be eligible for cash and medical assistance for which Federal reimbursement is available under this section shall be counted starting with the first month in which an individual meeting the definition of a Cuban and Haitian entrant in § 401.2 was first issued documentation by the Immigration and Naturalization Service indicating:

(1) That the entrant has been granted parole by the Attorney General under the Immigration and Nationality Act,

(2) That the entrant is in a voluntary departure status, or

(3) That the entrant's residence in a United States community is known to the Immigration and Naturalization Service.

The amendments are to be issued under the authority contained in section 412(a)(9), Immigration and Nationality Act (8 U.S.C. 1522(a)(9)).

PART 402—STATE LEGALIZATION IMPACT ASSISTANCE GRANTS

Subpart A—Introduction

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402.2 Definitions.

Subpart B—Use of Funds

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402.11 Limitations on Use of SLIAG funds.
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Subpart D—State Allocations

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Subpart F—Recordkeeping and Reporting

402.50 Recordkeeping.
402.51 Reporting.

AUTHORITY: 8 U.S.C. 1255a note, as amended.

SOURCE: 53 FR 7858, Mar. 10, 1988, unless otherwise noted.

Subpart A—Introduction

§ 402.1 General.

These regulations implement section 204 of Pub. L. 99-603, the Immigration Reform and Control Act of 1986 (IRCA), which establishes State Legalization Impact Assistance Grants (SLIAG) for States for fiscal year 1988 and for each of the three succeeding fiscal years. The purpose of SLIAG is to lessen the financial impact on State and local governments resulting from the adjustment of immigration status under the Act of certain groups of aliens residing in the States, the District of Columbia, Puerto Rico, the Virgin Islands, and Guam. Funds appropriated by this section may be applied by States with approved applications to certain State and local government costs incurred in providing public assistance and public health assistance to eligible legalized aliens and for making payments to State educational agencies for the purpose of assisting local educational agencies in providing certain educational services to eligible legalized aliens.

§ 402.2 Definitions.

As used in this part—

"The Act" means the Immigration Reform and Control Act of 1986, Pub. L. 99-603.

"Allocation" means an amount designated for a State for a fiscal year, as determined under § 402.31.

"Allotment" means the total amount awarded to a State for a fiscal year, as determined under § 402.32 or, if applicable, § 402.33.

"Department" means the U.S. Department of Health and Human Services.

"Educational Services" means:

(1) For eligible legalized aliens regardless of age enrolled in elementary or secondary school, services allowable under section 607 of the Emergency Immigrant Education Act, 20 U.S.C. 4101, et seq. (Pub. L. 98-511), as in effect on November 6, 1986.

(2) For adult eligible legalized aliens:

(i) Services authorized under the Adult Education Act, 20 U.S.C. 1201 et seq. (Pub. L. 89-750, as amended), as in effect November 6, 1986, and

(ii) English language and other programs designed to enable eligible legalized aliens to attain the citizenship skills required by section 245A(b)(1)(D)(i) of the INA.

"Eligible legalized alien" means an alien whose status has been adjusted to lawful temporary resident under section 245A, 210, or 210A of the Immigration and Nationality Act, beginning on the effective date of such adjustment as established by the Immigration and Naturalization Service, and continuing until the end of the five-year period beginning on the effective date of such adjustment, provided that during that time the alien remains in lawful temporary or permanent resident status granted under the Act.

"INA" means the Immigration and Nationality Act, 8 U.S.C. 1101, et seq.

"Local educational agency" means—

(a) A public board of education or other public authority legally constituted within a State for either administrative control of or direction of, or to perform service functions for, public elementary or secondary schools in—

(1) A city, county, township, school district, or other political subdivision of a State; or

(2) Such combination of school districts or counties a State recognizes as

an administrative agency for its public elementary or secondary schools; or

(b) Any other public institution or agency that has administrative control and direction of a public elementary or secondary school.

"Local government" has the same meaning as in 45 CFR Part 74.

"Nonpublic," as applied to an agency, organization, or institution, means that the agency, organization, or institution is nonprofit and is not under Federal or public supervision or control.

"Public," as applied to an agency, organization, or institution, means that the agency, organization, or institution is under the administrative supervision or control of a government other than the Federal Government.

"Public assistance" means cash, medical, or other assistance provided to meet the basic subsistence needs or health needs of individuals

(1) That is generally available to needy individuals residing in a State and

(2) That is provided with funds from units of State or local government.

As used in this definition, basic subsistence needs are minimal living requirements, including food, shelter and clothing. For purposes of this definition, assistance is considered to have been provided to needy individuals if specified income or resource requirements are used to determine eligibility or the amount of a fee or other charges to be paid for services. "Other assistance" means assistance and services, other than cash or medical assistance, that are directed at meeting basic subsistence needs, and that meet all of the criteria in this definition. "Other assistance" also means assistance and services in which participation is required as a condition of receipt of cash or medical assistance.

"Public health assistance" means health services (1) that are generally available to needy individuals residing in a State; (2) that receive funding from units of State or local government; and, (3) that are provided for the primary purpose of protecting the health of the general public, including, but not limited to, immunizations for immunizable diseases, testing and treatment for tuberculosis and sexually-transmitted diseases, and family planning services.

"Recipient" has the same meaning as in 45 CFR Part 74.

"Secretary" means the Secretary of the Department of Health and Human Services.

"SLIAG-related costs" means expenditures made to provide public assistance, public health assistance, or educational services, as defined in this part, to eligible legalized aliens, as defined in this part, regardless of whether those expenditures actually are reimbursed or paid for with funds allotted to the State under this part. SLIAG-related costs for education are limited to the amount of payment that can be made under the Act for educational services, as described in § 402.11(e). SLIAG-related costs exclude: (1) Expenditures by a State or local government for costs which are reimbursed or paid for by Federal programs other than SLIAG; and (2) program income (as defined in 45 CFR 74.42) received from or on behalf of eligible legalized aliens receiving services or benefits for which payment or reimbursement may be made under this part.

"State" means the 50 States, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands of the United States.

"State educational agency" means—

(1) The State board of education or other agency or officer primarily responsible for the supervision of public elementary and secondary schools in a State. In the absence of this officer or agency, it is an officer or agency designated by the Governor or State law; or

(2) The State board of education or other agency or officer primarily responsible for the State supervision of public elementary and secondary schools; or if there is a separate State agency or officer primarily responsible for supervision of adult education in public schools, then that agency or officer may be designated for the purpose of the Act by the Governor or by State law. If no agency or officer qualifies under the preceding sentence, the term means an appropriate agency or officer designated for the purpose of the Act by the Governor.

Subpart B—Use of Funds

§ 402.10 Allowable use of funds.

(a) Funds provided under this part for a fiscal year may be used only with respect to allowable SLIAG-related costs incurred in that fiscal year or succeeding fiscal years in providing assistance with services to eligible legalized aliens subject to § 402.26(a). States may use funds for:

(1) Public assistance, public health assistance, and educational services provided to eligible legalized aliens;

(2) Public health assistance provided to an alien applying on a timely basis to become an eligible legalized alien under section 245A of the INA, but not to those applying under section 210 or 210A of the INA.

(3) SLIAG and program administrative costs, as described in § 402.22 (a) and (b).

(b) Unless specifically prohibited by a statute enacted subsequent to November 6, 1986, a State may use SLIAG funds to pay the non-Federal share of costs allowable under (a) of this section incurred in providing assistance or services to eligible legalized aliens under Federal programs that have a matching or cost-sharing requirement, subject to the provisions of § 402.11(f) of this part.

(c) To the extent consistent with 45 CFR Part 74 and § 402.22 of this part, funds provided under this part may be used for State and local costs associated with meeting the administrative requirements established by the Act and this part and the administrative costs associated with providing assistance or services to eligible legalized aliens under a program or activity that receives funds under this part.

(d) Funds under this part may be used to reimburse or pay costs of providing assistance or services to eligible legalized aliens that are incurred prior to the approval of a State's FY 1988 application and, for all fiscal years, prior to the approval of a State's amendment to its application, pursuant to Subpart E of this part, provided that such reimbursement or payment is consistent with the Act and this part.

§ 402.11 Limitations on Use of SLIAG Funds.

(a) Funds provided under this part that are used for public assistance, public health assistance, and educational services may only be used only with respect to programs in a State or local jurisdiction that (1) meet the definitions of § 402.2, above, and (2) are otherwise consistent with the rules and procedures governing such programs.

(b) Funds provided under this part may not be used for costs to the extent that those costs are otherwise reimbursed or paid for under other Federal programs.

(c) Funds provided under this part may be used to reimburse State and/or local expenditures associated with providing public assistance and public health assistance to eligible legalized aliens and to make payments to State educational agencies for the purpose of providing educational services to eligible legalized aliens. However, the amount of reimbursement or payment may not exceed 100 percent of SLIAG-related costs, as defined in this part, associated with providing public assistance, public health assistance, and educational services.

(d) A State must use a minimum of 10 percent of its allotment under this part in any fiscal year for costs associated with each of the following program categories: public assistance, public health assistance, and educational services. In the event that a States does not require use of a full 10 percent in one of the above categories, it must allocate the unused portion equally among the remaining categories.

(e) Payments for educational services in any fiscal year may not exceed the amounts described in (e) (3), (4) and (5) of this section, and are subject to the limitations in (e) (1), (2), and (6) of this section.

(1) Payments may be made to a local educational agency in a fiscal year for the purpose of providing educational services to eligible legalized aliens enrolled in elementary or secondary school only if 500 eligible legalized aliens meeting the conditions in (e)(2) of this section, are enrolled in elemen-

tary or secondary public or non-public schools in that local educational agency's jurisdiction in that fiscal year or if such eligible legalized aliens represent at least 3 percent of the total number of students enrolled in elementary or secondary public or non-public schools within that local educational agency's jurisdiction in that fiscal year.

(2) In computing payments to local education agencies or to providers of educational services described in section 204(c)(3)(C) of the Act, State educational agencies may take into account only eligible legalized aliens who have been enrolled in elementary or secondary school, public or non-public school or in educational activities for adults described in § 402.2 in the United States for fewer than three complete academic years.

(3) The amount that may be paid in any fiscal year to a local educational agency with respect to eligible legalized aliens enrolled in elementary and secondary public or non-public school may not exceed an amount equal to $500 (less, in States receiving Emergency Immigrant Education Act (EIEA) funds, the amount described in (e)(6) of this section) multiplied by the number of eligible legalized aliens meeting the criteria specified in (e)(2) of this section, who are enrolled in public or private non-profit elementary and secondary schools in the jurisdiction of that local educational agency in that fiscal year.

(4) The amount that may be paid in any fiscal year to a local educational agency or other provider of educational services for adults (who are not enrolled in elementary or secondary school), as described in section 204(c)(3)(C) of the Act, may not exceed an amount equal to $500 multiplied by the number of eligible legalized aliens meeting the criteria in paragraph (e)(2) of this section who receive educational services from that provider in that fiscal year.

(5) In no event may the amount paid to a local education agency or other provider of educational services exceed the actual cost of providing those services to eligible legalized aliens, as determined in accordance with this part and 45 CFR Part 74.

(6) The maximum amount of payment to a local educational agency with respect to eligible legalized aliens enrolled in elementary and secondary school will be reduced from the amount described in (e)(3) of this section, by an amount equal to the amount of funds received by the local educational agency with respect to such eligible legalized aliens pursuant to section 606 of the Emergency Immigrant Education Act.

(f) Funds provided under this part may not be used to provide assistance under the programs of financial assistance from which eligible legalized aliens are barred by section 245A(h)(1), 210(f), or 210A(d)(6) of the INA. However, such funds may be used for the State and local share of the costs of providing such assistance to eligible legalized aliens who are excepted from the bar by section 245A(h) (2) or (3), 210(f), or 210A(d)(6) of the INA, provided that such individuals are otherwise eligible for benefits under such programs, and that the costs of providing those benefits are otherwise allowable under the Act, this regulation, and the State's approved application.

(g) Funds provided under this part shall not be used to perform abortions except where the life of the mother would be endangered if the fetus were carrier to term.

(h) Funds provided under this part shall not be used to reimburse or pay costs incurred by any public or private entity or any individual, in the conduct of a medical examination as required for application for adjustment to lawful temporary resident status under 8 CFR 245a.2(i) (52 FR 16212, May 1, 1987) or 8 CFR 210.2(d) (52 FR 16201, May 1, 1987).

§ 402.12 Use of SLIAG Funds for Costs Incurred Prior to October 1, 1987.

(a) Except as indicated in (b) and (c) of this section, States may not use funds provided under this part of costs incurred prior to October 1, 1987.

(b) A State may use funds provided under this part for administrative costs incurred prior to October 1, 1987, but after November 6, 1986, that are directly associated with implementation of this part. Such costs may include planning, preparing the application, establishing fund accounting and reporting systems, data development associated with the application, and other costs directly resulting from planning for implementation of this part.

(c) A State may use funds provided under this part for costs incurred prior to October 1, 1987, but after November 6, 1986, in providing public health services to eligible legalized aliens and to applicants for lawful temporary residence under section 245A of the INA, in conformity with the provisions of § 402.10(a).

Subpart C—Administration of Grants

§ 402.20 General provisions.

Except where otherwise required by Federal law, the Department's rules located at 45 CFR Part 74, relating to the administration of grants, apply to funds provided under this part.

§ 402.21 Fiscal control.

(a) Fiscal control and accounting procedures must be sufficient to permit preparation of reports required by the Act, this regulation, and other applicable statutes and regulations.

(b) States must have accounting procedures in place which allow funds provided under this part to be traced from drawdown to allowable SLIAG-related costs. Allowability of the amount and purpose of expenditures must be established for each recipient of SLIAG funds. States must demonstrate that SLIAG-related costs, as defined in this part, incurred in providing assistance or services to eligible legalized aliens equal or exceed the amount of SLIAG funds provided for those particular assistance and service activities. Documentation of the method of accounting and appropriate supporting information must be available for audit purposes and for Federal program reviews. To establish allowability of expenditures, States may use methods prescribed in (c) of this section. Alternatively, the State may use any other reliable method of cost calculation, subject to Federal review.

(c)(1) For public assistance, States may establish allowability by accounting for actual expenditures made to or on behalf of identifiable eligible legalized aliens who qualify for and receive assistance and/or services from the recipient, or by use of a statistically valid sampling of a recipient's public assistance caseload.

(2) For public health assistance, States may establish allowability by accounting for actual expenditures made to or on behalf of identifiable eligible legalized aliens who qualify for and receive such assistance and/or services, by use of a statistically valid sampling of clients in the public health system of the State or local government, or by using the ratio of eligible legalized aliens in a service population to all members of the relevant service population.

(3) For educational services, States must be able to demonstrate that:

(i) Funds provided under this part were used to provide educational services, as defined in this part, to eligible legalized aliens, as defined in this part; and,

(ii) Payments to local educational agencies or other providers of educational services, as described in section 204(c)(3)(C) of the Act, did not exceed the amounts described in § 402.11(e) of this part.

§ 402.22 SLIAG and program administrative costs.

(a) SLIAG administrative costs allowable under this part include the direct and indirect costs related to administration of this part, including: planning and consultation with local officials, preparing the application, audits, allocation of funds, tracking and recordkeeping, monitoring use of funds, and reporting.

(b) Program administrative costs are those costs associated with administering allowable assistance or services provided to eligible legalized aliens. Such costs may be based: On the proportion of eligible legalized aliens provided assistance and/or services allowable under this part by a recipient, relative to all persons provided such assistance and/or services; on the proportion of program or service costs actually incurred in providing assistance and/or services allowable under this part by a recipient, relative to all costs of providing the same assistance and/or services allowable under this part by the recipient; or, on such other basis as will document that administrative costs incurred in providing such assistance and/or services and reimbursed under this part are allowable, allocable to SLIAG, and reasonable.

(c) Consistent with section 604 of the Emergency Immigrant Education Act, of the amount paid to a State educational agency for educational services, only 1.5 percent may be used for administrative costs incurred by the State educational agency in carrying out its function under this part.

§ 402.23 Repayment.

The Department will order a State to repay amounts found not to have been expended in accordance with Federal law, regulations, the State's approved application, or terms of the State's grant. If a State refuses to repay such amounts, the Department may offset the amount against any other amount to which the State is or may become entitled under this part.

§ 402.24 Withholding.

After notice and opportunity for a hearing, the Secretary may withhold payment of funds to any State which is not using its allotment in accordance with the Act, these regulations, 45 CFR Part 74, and terms of the grant award.

§ 402.25 Appeals.

Appeals under this Subpart will be subject to 45 CFR Part 16, Procedures of the Departmental Grant Appeals Board.

§ 402.26 Time period for obligation and expenditure of grant funds.

(a) Any amount awarded to a State for a fiscal year and remaining unobligated at the end of such year shall remain available to the State for obligation in subsequent fiscal years, but not after September 30, 1994.

(b) Obligations by the State must be liquidated within 12 months of the end of the Federal fiscal year in which the obligation was made. However, where a State can demonstrate extenuating circumstances that prohibit compliance with this requirement, the Secretary may extend such date upon request by the State.

Subpart D—State Allocations

§ 402.30 Basis of awards.

The Secretary will award funds in a fiscal year to States with approved applications for that fiscal year in accordance with the apportionment of funds from the Office of Management and Budget. The grant award constitutes the authority to draw and expend funds for the purposes set forth in the Act and this regulation.

§ 402.31 Determination of allocations.

(a) *Allocation formula.* Allocations will be computed according to a formula using the following factors and weights:

(1) 50 percent based on the State's eligible legalized alien population, with 49 percent based upon the number of eligible legalized aliens in a State relative to the number of such aliens in all States, and 1 percent to States which have higher-than-average ratios of eligible legalized aliens to total population relative to the average for all States, based on the proportional number of such aliens; and

(2) 50 percent based on the ratio of SLIAG-related costs in a State to the total of all such costs in all States.

(b) *Calculation of allocations.* Each time the Department calculates State allocations, we will use the best data then available to the Secretary on the distribution of eligible legalized aliens by State. Allocations will be calculated as follows:

(1) *Initial FY 1988 allocations.* In FY 1988, initial State allocations will be calculated by applying the formula described in (a) of this section to 50 percent of the SLIAG funds available for grants to States in FY 1988. SLIAG-related costs will be based on Federal estimates of such costs.

(2) *Final FY 1988 allocations.* Final allocations for FY 1988 will be calculated by applying the formula described in (a) of this section to 100 percent of the SLIAG funds available for grants to States for FY 1988. SLIAG-

related costs for FY 1987 and FY 1988 will be obtained from States' FY 1989 applications, as required by § 402.41(c). (If a State does not submit an application for FY 1989, it still must submit the information described in paragraph 402.41(c) in order to receive its final allocation for FY 1988.)

(3) *FY 1989 allocations.* Allocations for FY 1989 will be determined by applying the allocation formula described in (a) of this section to the total amount of funds available for grants to States in FY 1988 and FY 1989. For purposes of calculating State allocations, the Department will use the SLIAG-related costs for FY 1987, FY 1988, and FY 1989 reported in each State's application submitted pursuant to § 402.41(c) of this part, as approved by the Secretary.

(4) *FY 1990 allocations.* Allocations for FY 1990 will be determined by applying the allocation formula described in paragraph (a) of this section to the total amount of funds available for grants to States in FY 1988, FY 1989, and FY 1990. For purposes of calculating FY 1990 State allocations, the Department will use the following sources of data for SLIAG-related costs:

(i) For FY 1987 and FY 1988, the report required by § 402.51(e). In the event that a State has not submitted this report, the Department will include no costs for FY 1987 or FY 1988 for that State in its calculation of FY 1990 allocations.

(ii) for FY 1989 and FY 1990, the estimates of SLIAG-related costs contained in States' applications submitted pursuant to § 402.41(c) of this part, as approved by the Secretary.

(5) *Initial FY 1991 Allocations.* Initial FY 1991 allocations will be calculated by applying the formula described in (a) of this section to the total amount of funds made available for grants to States for FY 1988, FY 1989, and FY 1990, plus 75 percent of funds available for grants to States for FY 1991. For purposes of calculating FY 1991 State allocations, the Department will use the following sources of data for SLIAG-related costs:

(i) For FY 1987, FY 1988, and FY 1989, the reports required by § 402.51(e). In the event that a State has not submitted a report for a fiscal year, the Department will include no costs for that fiscal year for that State in its calculation of initial FY 1991 allocations.

(ii) For FY 1990 and FY 1991, the estimates of SLIAG-related costs contained in the States' applications submitted pursuant to § 402.41(c) of this part, as approved by the Secretary.

(6) *Final FY 1991 Allocations.* Final allocations for FY 1991 will be determined by applying the allocation formula described in (a) of this section to the total amount of funds available for grants to States in FY 1988, FY 1989, FY 1990, and FY 1991. For purposes of calculating FY 1991 State allocations, the Department will use the following sources of data for SLIAG-related costs:

(i) For FY 1987, FY 1988, FY 1989, and FY 1990, the reports required by § 402.51(e). In the event that a State has not submitted a report for a fiscal year, the Department will include no costs for that fiscal year for that State in its calculation of final FY 1991 allocations.

(ii) For FY 1991, the estimates of SLIAG-related costs contained in the States' applications submitted pursuant to § 402.41(c) of this part, as approved by the Secretary.

§ 402.32 Determination of state allotments.

Except as noted below, a State's allotment is the difference between the amount determined under § 402.31(b) (2) through (6) of this regulation and the cumulative amount previously allotted to the State. In the event that the amount determined under § 402.31(b) (2) through (6) is less than the cumulative amount previously allotted to a State, that State's allotment will be zero. The allotments of the remaining States would be calculated by multiplying the difference between the amount determined under § 402.31(b) (2) through (6) of this regulation and the cumulative amount previously allotted to the State by the ratio of the amount of funds available for grants to States to the sum of the differences between the amounts determined under § 402.31(b) (2) through

(6) and the amounts previously awarded to those States. For purposes of determining final FY 1988 State allotments, the amount previously allotted to a State will be the amount allocated and awarded to the State pursuant to § 402.31(b)(1).

§ 402.33 Allotment of excess funds.

If a State fails to qualify for an allotment in a particular fiscal year because it did not submit an approvable application by the deadline established in § 402.43 of this part, or is not allotted its designated allocation amount because it indicated in its application that it does not intend to use, in the fiscal year for which the application is made or in the succeeding fiscal year, the full amount of its allocation, funds which would otherwise have been allotted to the State in that fiscal year shall be allotted among the remaining States submitting timely approved applications in proportion to the amount that otherwise would have been allotted to such States in that fiscal year.

Subpart E—State Applications

§ 402.40 General.

In order to be eligible for funds available under this part in a fiscal year, a State must submit an annual application. A State's application must be approved by the Secretary prior to the award of funds to that State.

§ 402.41 Application content.

A State application must:

(a) Contain certifications by the chief executive officer or an individual specifically designated to make such certifications on behalf of the chief executive officer that, notwithstanding other contents of the application, the State assures that:

(1) Funds allotted to the State will be used only to carry out the purposes described in the Act and this part.

(2) The State will provide a fair method for the allocation of funds among State and local agencies (as determined by the State) in accordance with the information in the application as required under (b) and (c) of this section and in accordance with the provisions of § 402.11(d) of this part, which sets forth minimum funding levels for program categories.

(3) Fiscal control and accounting procedures used in the administration of SLIAG funds will be established that are adequate to meet the requirements established by the Act and this regulation.

(4) The State will comply with the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975, on the basis of handicap under section 504 of the Rehabilitation Act of 1973, on the basis of sex under title IX of the Education Amendments of 1972, on the basis of race, color, or national origin under title VI of the Civil Rights Act of 1964, and on the basis of sex or religion under section 204(h)(1)(B) of the Immigration Reform and Control Act of 1986.

(b) Contain information on the number of eligible legalized aliens residing in the State. A State may either (1) adopt as its official State-level estimate the estimate of the State's number of eligible legalized aliens provided by the Department, or (2) provide its own estimate, including detailed information on the method and data used in deriving the estimate.

(c)(1) Contain an estimate of likely SLIAG-related costs for the fiscal year for which application is being made for each program or activity in which SLIAG-related costs will be incurred. Programs and activities must be identified by purposes described in § 402.10(a), that is, public assistance, public health assistance, and educational services, and SLIAG administrative costs as defined in § 402.22 (a) and (c). Such estimates for FY 1988 should include, as a discrete subset, costs incurred in FY 1987, pursuant to § 402.12.

(2) For applications for FY 1989, FY 1990, and FY 1991, in addition to the information in (c)(1) of this section contain updated estimates of SLIAG-related costs for each program or activity in which SLIAG-related costs have been or will be incurred in the fiscal year in which the application is being submitted. Programs and activities must be identified by the purposes described in § 402.10(a), that is, public assistance, public health assistance,

educational services, and SLIAG administrative costs as defined in § 402.22(a). (SLIAG-related costs incurred in FY 1987 pursuant to § 402.12 of this part are to be included, as a discrete subset, in the updated estimate of FY 1988 costs.)

(d) Contain the following information pertaining to the estimates required by (c) (1) and (2) of this section (the application must include sufficient detail to permit assessment by the Department of the reasonableness of such estimates and the allowability of such costs under the Act and this part):

(1) Descriptions of the programs and activities for which SLIAG-related costs have been or will be incurred.

(2) Descriptions of the methodologies used to determine SLIAG-related cost. This description is to include (i) the methodology used in determining the proportion (or actual number) of eligible legalized aliens who are likely to participate in or benefit from the program or service, and (ii) a description of how a unit or other measure of the cost of providing services or benefits was calculated, or, if the estimate is based on actual cost data, a description of how the data were obtained.

(e) Contain information on the criteria for and administrative methods of disbursing funds received under this part.

(f) Designate a single point of contact (SPOC) in the State responsible for securing and submitting information required by the Act and this regulation and provide the name, title, mailing address, and telephone number of such official. If the grantee agency is different from the SPOC, also provide the name, title, mailing address, and telephone number of the official in that agency responsible for State administration of funds available under this part. In either case, provide the employer identification number of the grantee agency.

If a State has previously provided this information to the Department, it need not be included in the application unless the information has changed.

§ 402.42 Application format.

A State may determine the format of its application as long as it contains all the information required by § 402.41.

§ 402.43 Application deadline.

(a) An application from a State for SLIAG funds for Federal fiscal year 1988 must be received by the Department by May 16, 1988. Applications for Federal fiscal years 1989, 1990, and 1991 must be received no later than July 15, 1988, October 1, 1989, and October 1, 1990, respectively. If a State fails to submit an application by these dates, funds which it may otherwise have been eligible to receive shall be distributed among States submitting timely approved applications in accordance with § 402.33 of this part.

(b) In order to receive funds under this part for FY 1988, a State's application must be approvable by the Secretary by July 1, 1988. In order to receive funds under this part for FY 1989, FY 1990, and FY 1991, a State's application must be approvable by the Secretary by October 1, 1988, December 15, 1989, and December 15, 1990, respectively. This may necessitate a State's providing clarification, revision, or additional material, as required, to render its application approvable by the Secretary. If a State fails to render its application approvable by the Secretary by these dates, funds which it may otherwise have been eligible to receive shall be distributed among States which have submitted approvable applications in accordance with § 402.32 of this part.

(Approved by the Office of Management and Budget under control number 0970-0079)

[53 FR 7858, Mar. 10, 1988, as amended at 54 FR 23984, June 5, 1989; 55 FR 26207, June 27, 1990]

§ 402.44 Basis for approval.

(a) The Department will review each State's application to ensure that it contains all of the required assurances and information and otherwise is consistent with the Act and this part.

(b) The Department will assess the reasonableness of each State's estimates of SLIAG-related costs, as required by § 402.41(c) (1) and (2), based on the following:

(1) Are the activities for which estimates are included in the application allowable under the Act and this part?

(2) Are the rates of participation by eligible legalized aliens in the activities for which estimates of SLIAG-related costs are included in the application and other assumptions underlying the cost estimates based on reliable empirical data?

(3) To what extent are the estimates based on actual costs incurred? Are actual costs based on methodologies described in this part or other methodologies likely to result in valid measures of SLIAG-related costs?

(4) Do current estimates appear to be consistent with past estimates, known actual costs pursuant to § 402.41(c)(2), and current INS eligible legalized alien population data?

(5) Are revised estimates a result (all or in part) of changes in program activities?

(c) The Department will notify the State that (1) its application has been approved or (2) its application has been disapproved, together with the reasons for disapproval.

§ 402.45 Amendments to applications.

(a) If, during the course of a fiscal year, a State adds a program or activity for which it intends to claim reimbursement or make payment in that fiscal year, it must submit an amendment (containing appropriate information pursuant to § 402.41(c)) to its approved application for that fiscal year.

(b) A State may use SLIAG funds received for a fiscal year to reimburse or pay SLIAG-related costs for programs or activities described in (a) of this section retroactive to the date the activity began, but no earlier than the first day of the fiscal year and only to the extent described in § 402.10(d). Costs incurred prior to October 1, 1987, are allowable only to the extent described in § 402.12.

Subpart F—Recordkeeping and Reporting

§ 402.50 Recordkeeping.

A State must provide for the maintenance of such records as are necessary:

(a) To meet the requirements of the Act and Department regulations relating to retention of and access to records.

(b) To allow the State to provide to the Department (1) an accurate description of its activities uncertaken with SLIAG funds, and (2) a complete record of the purposes for which SLIAG funds were spent, and of the recipients of such funds; and

(c) To allow the Department and auditors of the State to determine the extent to which SLIAG funds were expended consistent with the Act and this regulation.

§ 402.51 Reporting.

(a) After the end of a Federal fiscal year for which it received or during which it obligated or expended SLIAG funds and by the due date indicated below, a State must submit annual reports containing the information indentified in (c) and (e) of this section. The reports are due no later than 90 days after the end of a Federal fiscal year.

(b)(1) Failure to submit the annual report required in (a) of this section by the deadline, without prior written permission from the Secretary, constitutes a basis for withholding of SLIAG funds.

(2) Failure by a State to submit the required information prior to the calculation of allocations pursuant to Subpart D will result in the Secretary's including no SLIAG-related costs for the fiscal year for that State in the calculation of State allocations.

(c) A State's annual report must provide information on the status of each fiscal year's funds, as of September 30, for the fiscal year, including:

(1) Identification of the amount obligated and the amount expended by the State grantee agency;

(2) Identification of any amount remaining unobligated at the end of the fiscal year which the State intends to carry over to succeeding fiscal years; and,

(3) Identification of any amount remaining unobligated at the end of the fiscal year which the State does not desire to carry over to the succeeding fiscal year.

(d) A State must use SF-269 in its reporting under paragraph (c) of this section, but it may determine the format of its annual report content under paragraph (e) of this section.

(e) A State's annual report must also provide the actual SLIAG-related costs incurred during the fiscal year. The report must provide for each program or activity identified in the State's application, the amount of the actual SLIAG-related costs incurred in that program or activity, identified as public assistance, public health assistance, educational services and SLIAG administrative costs, the amount of SLIAG funds obligated for that program or activity, and the time period for which the funds were obligated. The report must contain a description of the methodology used to determine actual SLIAG-related costs, if different from the description provided in the State's application pursuant to § 402.41(d)(2). Federal and State costs of providing assistance under a State plan approved under title XIX of the Social Security Act to aliens whose status has been adjusted under sections 245A and 210A of the INA by virtue of the exceptions to the bar to Medicaid eligibility (sections 245A(h)(2) and (3) of the INA) must be shown separately in States' reports.

PARTS 403—499 [RESERVED]

FINDING AIDS

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Redesignation Table No. 1

At 42 FR 52827, Sept. 30, 1977, Parts 246, 248, 249, 250, 251 and 252 were redesignated. The following table shows the relationship between the new structure and the old regulations.

CROSS-REFERENCE TABLE

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45 CFR 246	42 CFR 446
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45 CFR 249	42 CFR 449
45 CFR 250	42 CFR 450
45 CFR 251	42 CFR 451
45 CFR 252	42 CFR 452

Redesignation Table No. 2

At 45 FR 56683, Aug. 25, 1980, Parts 205, 220, 222, 225, 226, 228, 229, and 231 were redesignated. The following tables show the relationship between the new structure and the old regulations.

Cross-Reference Table

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Former part	New part
45 CFR 205	45 CFR 1391
45 CFR 220	45 CFR 1392
45 CFR 222	45 CFR 1393
45 CFR 225	45 CFR 1391.51
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45 CFR 231	45 CFR 1392, Subpart E

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45 CFR 228	45 CFR 1396
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45 CFR 205.50	45 CFR 1391.3; for titles I, IV-A, X, XIV, XVI(AABD). 45 CFR 1396.10; for title XX
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45 CFR 205.70	45 CFR 1391.5 [1]
45 CFR 205.100	45 CFR 1391.6 [1]
45 CFR 205.101	45 CFR 1391.7 [1]
45 CFR 205.120	45 CFR 1391.8 [1]
45 CFR 205.130	45 CFR 1391.9 [1]
45 CFR 205.145	45 CFR 1391.10 [1]
45 CFR 205.150	45 CFR 1392.54; for titles IV-A and IV-B. 45 CFR 1393.89; for titles I, X, XIV, XVI(AABD). 45 CFR 1395, Subpart A for title XX
45 CFR 205.170	45 CFR 1391.11; for titles I, IV-A, X, XIV, XVI(AABD).
45 CFR 205.200	45 CFR 1391.50; for titles I, IV-A, X, XIV, XVI(AABD). 45 CFR 1396.8; for title XX
45 CFR 205.200	45 CFR 1392.10; for title IV-A. 45 CFR 1393.8; for titles I, X, XIV, XVI(AABD)

[1] For titles I, IV-A, X, XIV, XVI(AABD).

List of CFR Sections Affected

All changes in this volume of the Code of Federal Regulations which were made by documents published in the FEDERAL REGISTER since January 1, 1973, are enumerated in the following list. Entries indicate the nature of the changes effected. Page numbers refer to FEDERAL REGISTER pages. The user should consult the entries for chapters and parts as well as sections for revisions.

For the period before January 1, 1973, see the "List of CFR Sections Affected, 1949-1963 and 1964-1972," published in three separate volumes.

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